

Washington State Register

June 2, 1999

OLYMPIA, WASHINGTON

ISSUE 99-11

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filed not later than May 19, 1999

CITATION

Cite all material in the Washington State Register by its issue number and sequence within that issue, preceded by the acronym WSR. Example: the 37th item in the August 5, 1981, Register would be cited as WSR 81-15-037.

PUBLIC INSPECTION OF DOCUMENTS

A copy of each document filed with the code reviser's office, pursuant to chapter 34.05 RCW, is available for public inspection during normal office hours. The code reviser's office is located on the ground floor of the Legislative Building in Olympia. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except legal holidays. Telephone inquiries concerning material in the Register or the Washington Administrative Code (WAC) may be made by calling (360) 786-6697.

REPUBLICATION OF OFFICIAL DOCUMENTS

All documents appearing in the Washington State Register are prepared and printed at public expense. There are no restrictions on the republication of official documents appearing in the Washington State Register. All news services are especially encouraged to give wide publicity to all documents printed in the Washington State Register.

CERTIFICATE

Pursuant to RCW 34.08.040, the publication of rules or other information in this issue of the Washington State Register is hereby certified to be a true and correct copy of such rules or other information, except that headings of public meeting notices have been edited for uniformity of style.

DENNIS W. COOPER
Code Reviser

STATE MAXIMUM INTEREST RATE (Computed and filed by the State Treasurer under RCW 19.52.025)

The maximum allowable interest rate applicable for the month June 1999 pursuant to RCW 19.52.020 is twelve point zero percent (12.00%).

NOTICE: FEDERAL LAW PERMITS FEDERALLY INSURED FINANCIAL INSTITUTIONS IN THE STATE TO CHARGE THE HIGHEST RATE OF INTEREST THAT MAY BE CHARGED BY ANY FINANCIAL INSTITUTION IN THE STATE. THE MAXIMUM ALLOWABLE RATE OF INTEREST SET FORTH ABOVE MAY NOT APPLY TO A PARTICULAR TRANSACTION.

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The Washington State Register is an official publication of the state of Washington. It contains proposed, emergency, and permanently adopted administrative rules, as well as other documents filed with the code reviser's office pursuant to RCW 34.08.020 and 42.30.075. Publication of any material in the Washington State Register is deemed to be official notice of such information.

Mary F. Gallagher Dilley
Chair, Statute Law Committee

Kerry S. Radcliff
Editor

Dennis W. Cooper
Code Reviser

Joyce Matzen
Subscription Clerk

Gary Reid
Chief Assistant Code Reviser

STYLE AND FORMAT OF THE WASHINGTON STATE REGISTER

1. ARRANGEMENT OF THE REGISTER

The Register is arranged in the following nine sections:

- (a) **PREPROPOSAL**-includes the Preproposal Statement of Intent that will be used to solicit public comments on a general area of proposed rule making before the agency files a formal notice.
- (b) **EXPEDITED REPEAL**-includes the Preproposal Statement of Inquiry that lists rules being repealed using the expedited repeal process. Expedited repeals are not consistently filed and may not appear in every issue of the register.
- (c) **PROPOSED**-includes the full text of formal proposals, continuances, supplemental notices, and withdrawals.
- (d) **EXPEDITED ADOPTION**-includes the full text of rules being changed using the expedited adoption process. Expedited adoptions are not consistently filed and may not appear in every issue of the Register.
- (e) **PERMANENT**-includes the full text of permanently adopted rules.
- (f) **EMERGENCY**-includes the full text of emergency rules and rescissions.
- (g) **MISCELLANEOUS**-includes notice of public meetings of state agencies, rules coordinator notifications, summaries of attorney general opinions, executive orders and emergency declarations of the governor, rules of the state Supreme Court, and other miscellaneous documents filed with the code reviser's office under RCW 34.08.020 and 42.30.075.
- (h) **TABLE**-includes a cumulative table of the WAC sections that are affected in the current year.
- (i) **INDEX**-includes a cumulative index of Register Issues 01 through 24.

Documents are arranged within each section of the Register according to the order in which they are filed in the code reviser's office during the pertinent filing period. Each filing is listed under the agency name and then describes the subject matter, type of filing and the WSR number. The three part number in the heading distinctively identifies each document, and the last part of the number indicates the filing sequence with a section's material.

2. PRINTING STYLE—INDICATION OF NEW OR DELETED MATERIAL

RCW 34.05.395 requires the use of certain marks to indicate amendments to existing agency rules. This style quickly and graphically portrays the current changes to existing rules as follows:

- (a) In amendatory sections—
 - (i) underlined material is new material;
 - (ii) ~~deleted material~~ is ~~((lined out between double parentheses))~~;
- (b) Complete new sections are prefaced by the heading **NEW SECTION**;
- (c) The repeal of an entire section is shown by listing its WAC section number and caption under the heading **REPEALER**.

3. MISCELLANEOUS MATERIAL NOT FILED UNDER THE ADMINISTRATIVE PROCEDURE ACT

Material contained in the Register other than rule-making actions taken under the APA (chapter 34.05 RCW) does not necessarily conform to the style and format conventions described above. The headings of these other types of material have been edited for uniformity of style; otherwise the items are shown as nearly as possible in the form submitted to the code reviser's office.

4. EFFECTIVE DATE OF RULES

- (a) Permanently adopted agency rules normally take effect thirty-one days after the rules and the agency order adopting them are filed with the code reviser's office. This effective date may be delayed or advanced and such an effective date will be noted in the promulgation statement preceding the text of the rule.
- (b) Emergency rules take effect upon filing with the code reviser's office unless a later date is provided by the agency. They remain effective for a maximum of one hundred twenty days from the date of filing.
- (c) Rules of the state Supreme Court generally contain an effective date clause in the order adopting the rules.

5. EDITORIAL CORRECTIONS

Material inserted by the code reviser's office for purposes of clarification or correction or to show the source or history of a document is enclosed in [brackets].

1998 - 1999

DATES FOR REGISTER CLOSING, DISTRIBUTION, AND FIRST AGENCY ACTION

Issue Number	Closing Dates ¹			Distribution Date	First Agency Hearing Date ³	Expedited Adoption ⁴
	Non-OTS and 30 p. or more	Non-OTS and 11 to 29 p.	OTS ² or 10 p. max. Non-OTS			
For Inclusion in -	File no later than 12:00 noon -			Count 20 days from -	For hearing on or after	First Agency Adoption Date
98 - 16	Jul 7, 98	Jul 21, 98	Aug 5, 98	Aug 18, 98	Sep 7, 98	Oct 2, 98
98 - 17	Jul 22, 98	Aug 5, 98	Aug 19, 98	Sep 2, 98	Sep 22, 98	Oct 17, 98
98 - 18	Aug 5, 98	Aug 19, 98	Sep 2, 98	Sep 16, 98	Oct 6, 98	Oct 31, 98
98 - 19	Aug 26, 98	Sep 9, 98	Sep 23, 98	Oct 7, 98	Oct 27, 98	Nov 21, 98
98 - 20	Sep 9, 98	Sep 23, 98	Oct 7, 98	Oct 21, 98	Nov 10, 98	Dec 5, 98
98 - 21	Sep 23, 98	Oct 7, 98	Oct 21, 98	Nov 4, 98	Nov 24, 98	Dec 19, 98
98 - 22	Oct 7, 98	Oct 21, 98	Nov 4, 98	Nov 18, 98	Dec 8, 98	Jan 2, 99
98 - 23	Oct 21, 98	Nov 4, 98	Nov 18, 98	Dec 2, 98	Dec 22, 98	Jan 16, 99
98 - 24	Nov 4, 98	Nov 18, 98	Dec 2, 98	Dec 16, 98	Jan 5, 99	Jan 30, 99
99 - 01	Nov 25, 98	Dec 9, 98	Dec 23, 98	Jan 6, 99	Jan 26, 99	Feb 20, 99
99 - 02	Dec 9, 98	Dec 23, 98	Jan 6, 99	Jan 20, 99	Feb 9, 99	Mar 6, 99
99 - 03	Dec 23, 98	Jan 6, 99	Jan 20, 99	Feb 3, 99	Feb 23, 99	Mar 20, 99
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99 - 06	Feb 3, 99	Feb 17, 99	Mar 3, 99	Mar 17, 99	Apr 6, 99	May 1, 99
99 - 07	Feb 24, 99	Mar 10, 99	Mar 24, 99	Apr 7, 99	Apr 27, 99	May 22, 99
99 - 08	Mar 10, 99	Mar 24, 99	Apr 7, 99	Apr 21, 99	May 11, 99	Jun 5, 99
99 - 09	Mar 24, 99	Apr 7, 99	Apr 21, 99	May 5, 99	May 25, 99	Jun 19, 99
99 - 10	Apr 7, 99	Apr 21, 99	May 5, 99	May 19, 99	Jun 8, 99	Jul 3, 99
99 - 11	Apr 21, 99	May 5, 99	May 19, 99	Jun 2, 99	Jun 22, 99	Jul 17, 99
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99 - 19	Aug 25, 99	Sep 8, 99	Sep 22, 99	Oct 6, 99	Oct 26, 99	Nov 20, 99
99 - 20	Sep 8, 99	Sep 22, 99	Oct 6, 99	Oct 20, 99	Nov 9, 99	Dec 4, 99
99 - 21	Sep 22, 99	Oct 6, 99	Oct 20, 99	Nov 3, 99	Nov 23, 99	Dec 18, 99
99 - 22	Oct 6, 99	Oct 20, 99	Nov 3, 99	Nov 17, 99	Dec 7, 99	Jan 1, 00
99 - 23	Oct 20, 99	Nov 3, 99	Nov 17, 99	Dec 1, 99	Dec 21, 99	Jan 15, 00
99 - 24	Nov 3, 99	Nov 17, 99	Dec 1, 99	Dec 15, 99	Jan 4, 00	Jan 29, 00

¹ All documents are due at the code reviser's office by 12:00 noon on or before the applicable closing date for inclusion in a particular issue of the Register; see WAC 1-21-040.

² A filing of any length will be accepted on the closing dates of this column if it has been prepared and completed by the order typing service (OTS) of the code reviser's office; see WAC 1-21-040. Agency-typed material is subject to a ten page limit for these dates; longer agency-typed material is subject to the earlier non-OTS dates.

³ At least twenty days before the rule-making hearing, the agency shall cause notice of the hearing to be published in the Register; see RCW 34.05.320(1). These dates represent the twentieth day after the distribution date of the applicable Register.

⁴ A minimum of forty-five days is required between the distribution date of the Register giving notice of the expedited adoption and the agency adoption date. No hearing is required, but the public may file written objections. See RCW 34.05.230, as amended by section 202, chapter 409, Laws of 1997.

REGULATORY FAIRNESS ACT

The Regulatory Fairness Act, chapter 19.85 RCW, was enacted in 1982 to minimize the impact of state regulations on small business. Amended in 1994, the act requires a small business economic impact analysis of proposed rules that impose more than a minor cost on twenty percent of the businesses in all industries, or ten percent of the businesses in any one industry. The Regulatory Fairness Act defines industry as businesses within a four digit SIC classification, and for the purpose of this act, small business is defined by RCW 19.85.020 as "any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, that has the purpose of making a profit, and that has fifty or fewer employees."

Small Business Economic Impact Statements (SBEIS)

A small business economic impact statement (SBEIS) must be prepared by state agencies when a proposed rule meets the above criteria. Chapter 19.85 RCW requires the Washington State Business Assistance Center (BAC) to develop guidelines for agencies to use in determining whether the impact of a rule is more than minor and to provide technical assistance to agencies in developing a SBEIS. All permanent rules adopted under the Administrative Procedure Act, chapter 34.05 RCW, must be reviewed to determine if the requirements of the Regulatory Fairness Act apply; if an SBEIS is required it must be completed before permanent rules are filed with the Office of the Code Reviser.

Mitigation

In addition to completing the economic impact analysis for proposed rules, state agencies must take reasonable, legal, and feasible steps to reduce or mitigate the impact of rules on small businesses when there is a disproportionate impact on small versus large business. State agencies are encouraged to reduce the economic impact of rules on small businesses when possible and when such steps are in keeping with the stated intent of the statute(s) being implemented by proposed rules. Since 1994, small business economic impact statements must contain a list of the mitigation steps taken, or reasonable justification for not taking steps to reduce the impact of rules on small businesses.

When is an SBEIS Required?

When:

The proposed rule has more than a minor (as defined by the BAC) economic impact on businesses in more than twenty percent of all industries or more than ten percent of any one industry.

When is an SBEIS Not Required?

When:

The rule is proposed only to comply or conform with a federal law or regulation, and the state has no discretion in how the rule is implemented;

There is less than minor economic impact on business;

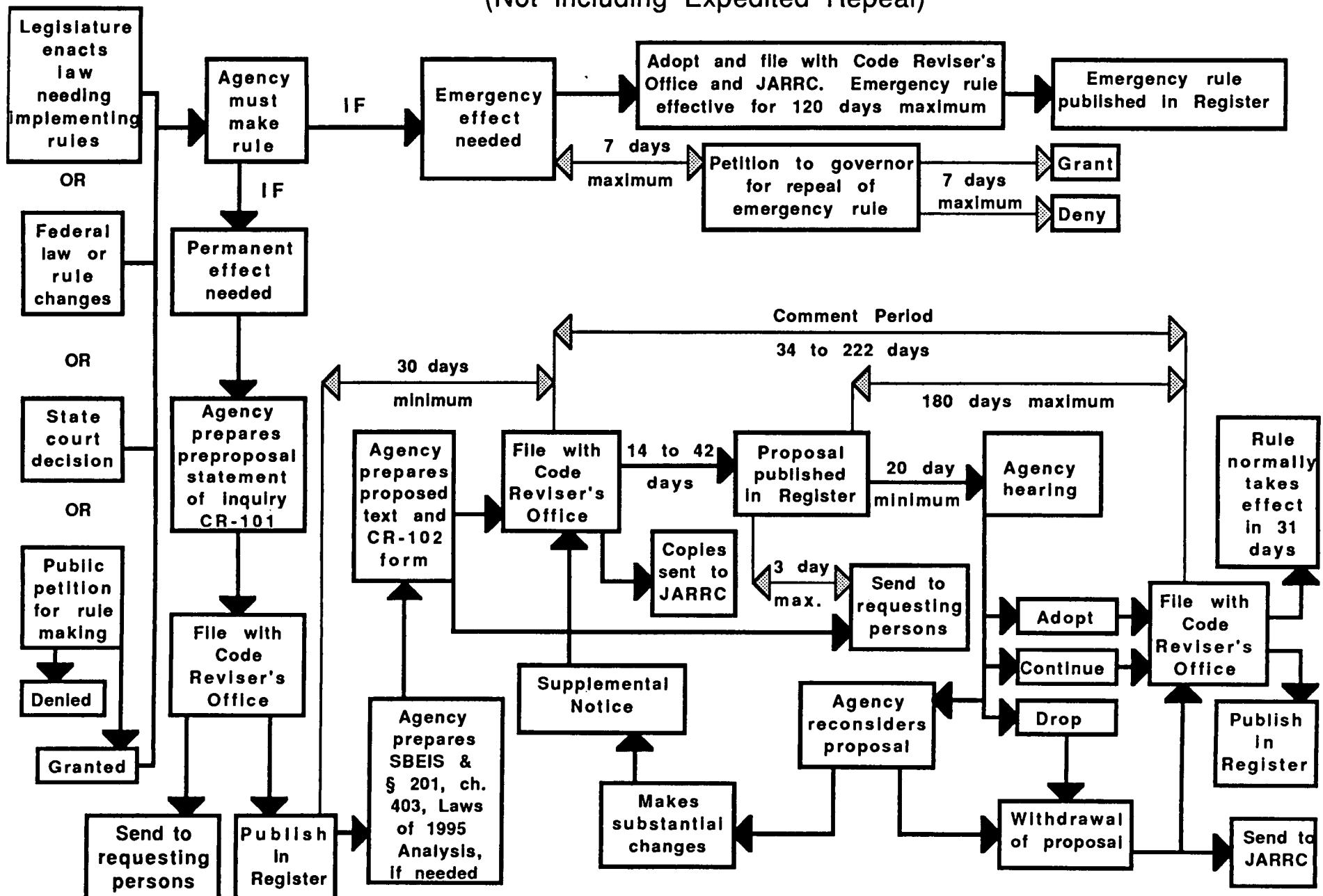
The rule REDUCES costs to business (although an SBEIS may be a useful tool for demonstrating this reduced impact);

The rule is adopted as an emergency rule, although an SBEIS may be required when an emergency rule is proposed for adoption as a permanent rule; or

The rule is pure restatement of state statute.

RULE-MAKING PROCESS

(Not including Expedited Repeal)



WSR 99-11-005
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
RETIREMENT SYSTEMS
[Filed May 7, 1999, 8:49 a.m.]

Subject of Possible Rule Making: Miscellaneous law enforcement officers and fire fighters retirement system (LEOFF) rules other than those concerning disability.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 41.50.050.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Statutory changes have made some rules obsolete. Others are unclear.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Because the department already has existing rules on this subject in place and the amendments do not change such subject matter, the department did not seek input on the preliminary draft prior to filing the CR-101. Copies of the draft rule will be circulated to interested parties for comment. Interested parties include those persons known to the department, such as state employees, and any other person who requests a copy and/or opportunity to comment.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Leah Wilson, LEOFF Plan Administrator, phone (360) 664-7049 or Elyette M. Weinstein, Rules Coordinator, phone (360) 664-7307; Legal Services, Department of Retirement Systems, Mailstop 48380, P.O. Box 48380, Olympia, WA 98504-8380, fax (360) 753-3166.

May 6, 1999

Elyette M. Weinstein
Rules Coordinator

WSR 99-11-016
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF LICENSING
[Filed May 10, 1999, 1:50 p.m.]

Subject of Possible Rule Making: Chapter 308-96A WAC, Disabled person special parking privileges, to include but not limited to WAC 308-96A-306, 308-96A-311, 308-96A-312, 308-96A-313, 308-96A-314, and 308-96A-316.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 46.16.276.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Rule making may be required as a result of this review to implement chapter 136 of the laws passed during the 1999 session.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Negotiated rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Patrick J. Zlateff, Rules Coordinator, Title and Registration Services, Vehicle Services, Mailstop 48001, P.O. Box 2957, Olympia, WA 98507-2957, or by phone (360) 902-3718, fax (360) 664-0831, TDD (360) 664-8885.

May 7, 1999

Deborah McCurley
Acting Administrator
Title and Registration Services

WSR 99-11-025

PREPROPOSAL STATEMENT OF INQUIRY
INSURANCE COMMISSIONER'S OFFICE

[Insurance Commissioner Matter No. R 99-4—Filed May 13, 1999, 11:36 a.m.]

Subject of Possible Rule Making: The commissioner may consider amending rules governing the state health insurance pool. These rules would require pool coverage in Washington counties where no comprehensive individual health plans are commercially available. The commissioner has requested that the Health Insurance Pool Board submit an amendment to its plan of operation to assure the availability of comprehensive health insurance to state residents. The commissioner may adopt rules governing pool operations consistent with this request to assure the fair, reasonable, and equitable administration of the pool.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 48.41.040 and 48.41.170.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Many state residents are unable to purchase a comprehensive, commercial, individual health plan from a health carrier. The Washington state health insurance pool was created in 1987 "to provide a mechanism to insure the availability of comprehensive health insurance to persons unable to obtain such insurance coverage on either an individual or group basis directly under any health plan." (RCW 48.41.020) This statutory statement of purpose precisely describes the circumstances of state residents in many Washington counties. The commissioner intends to consider all rules necessary to assist the pool board in accomplishing this statutory purpose to assure that Washington residents have access to comprehensive individual health insurance coverage.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Discussions with affected individuals and organizations.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Kacy Brandedberry, P.O. Box 40255,

Olympia, WA 98505-0255 [98504-0255], phone (360) 664-3784, fax (360) 664-2782, Internet KacyB@oic.wa.gov.

May 13, 1999

Robert A. Harkins
Chief Deputy Commissioner

WSR 99-11-026
PREPROPOSAL STATEMENT OF INQUIRY

DEPARTMENT OF TRANSPORTATION

[Filed May 13, 1999, 1:15 p.m.]

Subject of Possible Rule Making: Update system safety program standard for municipal rail fixed guideway systems that are not regulated by the Federal Railroad Administration, chapter 468-550 WAC.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Section 7, chapter 202, Laws of 1999.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Update existing rules to comply with recently enacted law, and add rules to address imposing sanctions for not complying with these rules.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Federal Transit Administration: Submit annual and incident reports.

Process for Developing New Rule: Negotiated rule making; and informal municipal review of preliminary drafts of the rule.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Paul Gamble, Public Transportation and Rail Division, P.O. Box 47387, Olympia, WA 98504-7387, phone (360) 705-7912, e-mail gamblep@wsdot.wa.gov, fax (360) 705-6820. There will be at least one meeting, probably in Seattle, to exchange ideas about what needs to be updated and at what levels sanctions need to be applied.

May 13, 1999

Gerald E. Smith
Deputy Secretary, Operations

WSR 99-11-030
PREPROPOSAL STATEMENT OF INQUIRY

DEPARTMENT OF HEALTH

(State Board of Health)

[Filed May 13, 1999, 2:25 p.m.]

Subject of Possible Rule Making: Chapter 246-760 WAC, Auditory and visual standards—School districts.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Visual and auditory screening, RCW 28A.210.020.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Review of these rules is called for by the Department of Health and State Board of Health rules review plans. The plans have been developed in response to the Governor's Executive Order 97-02.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The Office of the Superintendent of Public Instruction (OSPI) is charged by law to assist school districts with screening requirements. OSPI is cooperating with the Department of Health in the development of necessary changes in the rules.

Process for Developing New Rule: Stakeholders and interested organizations are being provided with early written notice of this rules review, and they will have an opportunity to review and comment on draft rules before proposed rules are filed with the Office of the Code Reviser. The Board of Health will conduct a public hearing before taking action on proposed rules changes.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Donna White, Child and Adolescent Health/CHILD Profile Program Manager, Department of Health, Mailstop 47880, Olympia, WA 98504-7880, (360) 236-3534, fax (360) 586-7868.

May 10, 1999

James Robertson
Acting Executive Director
State Board of Health

WSR 99-11-031

PREPROPOSAL STATEMENT OF INQUIRY

DEPARTMENT OF HEALTH

(State Board of Health)

[Filed May 13, 1999, 2:26 p.m.]

Subject of Possible Rule Making: Chapter 246-762 WAC, Scoliosis screening—School districts.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Scoliosis screening, RCW 28A.210.220.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Review of these rules is called for by the Department of Health and State Board of Health rules review plans. The plans have been developed in response to the Governor's Executive Order 97-02.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The Office of the Superintendent of Public Instruction provides for and requires scoliosis screening in public schools. OSPI is cooperating with the Department of Health in the consideration of necessary changes in the rules.

Process for Developing New Rule: Stakeholders and interested organizations are being provided with early written notice of this rules review, and they will have an opportunity to review and comment on draft rules before proposed rules are filed with the Office of the Code Reviser. The Board of Health will conduct a public hearing before taking action on proposed rules changes.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Donna White, Child and Adolescent Health/CHILD Profile Program Manager, Department of

Health, Mailstop 47880, Olympia, WA 98504-7880, (360) 236-3534, fax (360) 586-7868.

A grand rounds on scoliosis screening will be conducted by Children's Hospital Regional Medical Center on August 5, 1999.

May 10, 1999
 James Robertson
 Acting Executive Director
 State Board of Health

WSR 99-11-032

PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF HEALTH
 (Nursing Care Quality Assurance Commission)
 [Filed May 13, 1999, 2:27 p.m.]

Subject of Possible Rule Making: Amending WAC 246-840-010 Definitions, 246-840-760 Terms used in WAC 246-840-750 through 246-840-780, 246-840-920 Definitions, 246-840-020 Documents which indicate authorization to practice nursing in Washington and 246-840-565 Students in approved nursing education programs.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 18.79.110.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: During a mandatory rules review process these rules were identified as needing amendments. Some of the definitions need to be amended to be more clear and concise regarding competencies and nursing technicians. Some of the definitions in the other sections need to be moved into one section so that all definitions are in one place rather than in three separate rules.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: During the mandatory review of all significant or controversial rules according to the Governor's executive order, this rule was identified as needing amendment because it is confusing to have definitions in these separate rules, they should all be located in one rule. Members of the public were invited to attend public meetings and interested persons were provided a copy of the rule to comment on.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Terry J. West, Health Administrator, Department of Health, P.O. Box 47864, Olympia, WA 98504, phone (360) 236-4712, fax (360) 236-4738.

April 16, 1999

Paula R. Meyer, RN, MSN
 Executive Director

WSR 99-11-033

PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF HEALTH
 (Nursing Care Quality Assurance Commission)
 [Filed May 13, 1999, 2:28 p.m.]

Subject of Possible Rule Making: New chapter 246-840 WAC, Telenursing.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 18.79.110.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The Nursing Commission is concerned regarding the number of advisory opinions being requested and the need for technical assistance in the area of telenursing. The nursing scope of practice allows nurses to advise and teach patients about health maintenance and symptom management. It does not allow following a protocol that has the nurses in the position of forming a medical diagnosis and then implementing an order for a prescription medication. Because there is much confusion regarding when is telenursing within the scope of practice and when is it beyond, the Nursing Commission feels that a rule should be developed which will adequately explain to the nurses so as to avoid possible disciplinary action.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: The Nursing Commission will hold several open rules writing workshops to work with students, nurses and facilities to write a rule. Following the workshops a public rules hearing will be held to take additional input. All persons on the interested persons mailing list, schools and targeted facilities will be contacted to participate in this open public process.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Terry J. West, Health Administrator, Department of Health, P.O. Box 47864, Olympia, WA 98504, phone (360) 236-4712, fax (360) 236-4738.

April 27, 1999

Paula R. Meyer, RN, MSN
 Executive Director

WSR 99-11-034

PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF HEALTH
 (Nursing Care Quality Assurance Commission)
 [Filed May 13, 1999, 2:28 p.m.]

Subject of Possible Rule Making: Create a practice standard regarding "conscious sedation." A rule would include definitions, how this practice standard applies to nurses, roles and responsibilities of these advanced skills.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 18.79.110.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The Nursing Care Quality Assurance Commission has received numerous requests for

advisory opinions regarding conscious sedation. These requests have included questions about medications; level of training and preparation necessary prior to performing the procedures and questions about ongoing quality assurance measures. The rule would include statements about the above in addition to definitions, current practice standards and expectations of the Nursing Commission.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: A series of public rules writing workshops will be held in both Eastern and Western Washington. During these meetings the Nursing Commission will discuss the issues surrounding conscious sedation and alternatives to rule writing. Based on the input from nurses, students and health care organizations, the Nursing Commission will determine whether a rule, policy or guideline is appropriate.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Terry J. West, Program Manager, Department of Health, P.O. Box 47864, Olympia, WA 98504-7864, phone (360) 236-4712, fax (360) 236-4738, e-mail tjw1303@hub.doh.gov.

March 23, 1999

Paula R. Meyer, RN, MSN
Executive Director

WSR 99-11-035
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF HEALTH
(Board of Osteopathic Medicine and Surgery)
[Filed May 13, 1999, 2:29 p.m.]

Subject of Possible Rule Making: This proposal considers the COMSPEX-USA as an acceptable examination to meet the board's requirement of an examination in osteopathic practices and principles and fulfill the need to test osteopathic physicians who may have competency issues.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 18.57.080, 18.57.005, 18.130.050.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The osteopathic statute requires that all applicants be examined in osteopathic practices and principles. Previously there has not been a standardized national test to meet this need. The board may also require a competency examination as part of a disciplinary sanction and this examination would be able to provide that type of evaluation.

Process for Developing New Rule: Information relative to the examination provided by the National Board of Osteopathic Medical Examiners. Collaborative rule-making with interested parties will be accomplished by accepting written input or at board meetings where the issue will [be] discussed.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Arlene Robertson, Program Manager,

P.O. Box 47870, Olympia, WA 98504-7870, phone (360) 236-4945, fax (360) 586-0745.

The public and licensees may submit written comments or attend regular board meetings that this issue is on the agenda for discussion.

March 18, 1999

Robert J. Nicoloff
Executive Director

WSR 99-11-041
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF REVENUE
[Filed May 14, 1999, 1:44 p.m.]

Subject of Possible Rule Making: WAC 458-20-246 Sales to or through a direct seller's representative.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 82.32.330.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: This rule needs revision to clarify the specific statutory conditions under which the exemption may be claimed.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Modified negotiated rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. Written comments may be submitted by mail, fax, or at the public meeting. Oral comments will be accepted at the public meeting. A preliminary draft of the proposed changes is available upon request. Written comments on and/or requests for copies of the rule may be directed to Leslie Cushman, Legislation and Policy, P.O. Box 47467, Olympia, WA 98504-7467, phone (360) 664-0057, fax (360) 664-0693.

Location and Date of Public Meeting: On June 29, 1999, at 10:00 a.m., Evergreen Plaza Building, 711 Capitol Way South, 2nd Floor Conference Room, Olympia, WA.

Assistance for Persons with Disabilities: Contact Ginny Dale no later than ten days before the hearing date, TDD 1-800-451-7985, or (360) 586-0721.

May 14, 1999

Claire Hesselholt, Rules Manager
Legislation and Policy Division

WSR 99-11-051
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Adult Services Administration)
[Filed May 17, 1999, 2:34 p.m.]

Subject of Possible Rule Making: To adopt rules on a new long-term care program option called PACE, which

stands for the program of all-inclusive care. PACE provides managed, acute medical and long-term care services to frail adults over fifty-five who would otherwise need nursing facility services.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Statutory authority is derived from RCW 74.04.057, 74.08.090, 74.09.520, and 74.39A.030.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Rules are necessary to formalize PACE policies and program criteria, and provide guidance and standardize field operations.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: HCFA, Long-Term Care Ombudsman, Office of Attorney General, and Social Security Administration. Aging and Adult Services Administrative (AASA) will work with all other affected agencies: Include them in mailings, invite meeting participation regarding these rule changes and any other rule development activities. When possible, opportunities to collaborate will be published in the Washington State Register and posted on agency Internet pages.

Process for Developing New Rule: AASA will seek the opinion of all interested stakeholders. Upon determining proposed WAC, AASA will implement the rule-making process, including scheduled, formal and informal meetings to allow for public input.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Brooke Buckingham, Aging and Adult Services Administration, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 493-2544, TTY (360) 493-2637.

May 17, 1999

Marie Myerchin-Redifer, Manager
Rules and Policies Assistance Unit

WSR 99-11-055

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF ECOLOGY

[Order 99-03—Filed May 17, 1999, 4:37 p.m.]

Subject of Possible Rule Making: Chapter 173-224 WAC, Wastewater discharge permit fees.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 90.48.465, water pollution control.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Ecology is proposing to amend chapter 173-224 WAC which will increase annual permit fees for the FY 1999-2001 biennium as well as create new permit fee categories for some previously unpermitted operations. The fee increase will allow ecology to manage the wastewater discharge permit program at an appropriate level. The creation of new fee categories will establish annual fees for new entities receiving permit coverage.

Process for Developing New Rule: Ecology uses a Water Quality Advisory Committee to provide guidance on various issues, one of which concerns amendments to the permit fee regulation. This committee consists of industrial permit holders, municipal permit holders, government entities,

environmental groups, etc. They are aware of these proposals. Permit holders will be notified directly of the proposed rule amendments. Public meetings will be advertised through newspapers and radio.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Bev Poston, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6425, fax (360) 407-6426, e-mail BPOS461@ecy.wa.gov.

Workshop Schedule

All workshops will be held from 1:30 p.m. to 3:00 p.m. at the following locations:

Ecology Headquarters Office Auditorium 300 Desmond Drive Lacey, WA	July 12, 1999 - Monday
Ecology Northwest Regional Office Rooms 1 A & B 2190 160th Avenue S.E. Bellevue, WA	July 13, 1999 - Tuesday
Public Library Lecture Room 210 Central Bellingham, WA	July 14, 1999 - Wednesday
Cowlitz Co PUD 961 12th Avenue Longview, WA	July 15, 1999 - Thursday
Ecology Central Regional Office Waterfall Room 15 West Yakima Avenue, Suite 200 Yakima, WA	July 19, 1999 - Monday
Ecology Hanford Office Conference Rooms 4 - 6 1315 West 4th Avenue Richland, WA	July 20, 1999 - Tuesday
Ecology Eastern Regional Office Large Downstairs Conference Room North 4601 Monroe, Suite 100 Spokane, WA	July 21, 1999 - Wednesday
Commissioners Conference Room 129 South Chelan Wenatchee, WA	July 22, 1999 - Thursday

May 11, 1999

Megan White, P.E.
Program Manager

WSR 99-11-056

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF AGRICULTURE

[Filed May 18, 1999, 9:36 a.m.]

Subject of Possible Rule Making: Rules relating to rights of persons aggrieved by pesticide violations, WAC 16-10-101 through 16-10-030.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 15.58.040 and 17.21.030.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The department has conducted a review of the above-mentioned rule under the provisions of the Governor's Executive Order 97-02 and has determined that the rules are necessary and should be retained. Statute language does not adequately address the definition of an aggrieved party, establish clear time lines for reconsideration, and does not clearly address Department of Agriculture responsibilities of notification. Chapter 16-10 WAC was adopted to clarify these sections of statute. The rule should not be changed or repealed.

Process for Developing New Rule: A rules review was conducted in accordance with the Governor's Executive Order 97-02. Results of this review will be shared with representatives of the rule stakeholders for input.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. The department is seeking input on its decision to retain the rule. You may comment by writing to the Washington State Department of Agriculture, Administrative Regulations Unit, P.O. Box 42560, Olympia, WA 98504-2560, or fax at (360) 902-2092, or e-mail kbromley@agr.wa.gov. Comments should be made by July 8, 1999.

For a Copy of the Review Report Contact: Laurie Mauerman, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560.

Bob Arrington
Assistant Director

WSR 99-11-057
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF AGRICULTURE
[Filed May 18, 1999, 9:36 a.m.]

Subject of Possible Rule Making: Amendments/modification of the rules related to pesticide bulk storage and operational area containment are necessary at this time. Recent advances in technologies related to secondary containment have been made since the adoption of this rule. In addition, field inspections at facilities have identified the need for clarification in certain sections of the rule. Clarification is needed concerning field storage, and large facilities (individual tanks exceeding 100,000 gallons), where pesticides are stored.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapters 15.58 and 17.21 RCW.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The secondary containment rules relating to pesticides were originally adopted to prevent/mitigate the potential adverse effects which may result concerning the containment of pesticides as well as areas in which pesticides are mixed and loaded. Recent technology advances need to be considered for adoption into rule if such containment provide appropriate protection. This would allow additional flexibility for businesses to achieve compliance. Inspections have identified the need to clarify certain sections of this rule. Clarification is needed to insure compliance is accurately achieved.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The Environmental Protection Agency (EPA) regulates the use of pesticides primarily through the pesticide label. EPA has delegated WSDA pesticide management as the state lead agency for the enforcement of pesticides in Washington state. EPA will be appraised during the entire rule-making process and be offered an opportunity to provide comments. No other state agencies are involved. The Department of Ecology does regulate situations in which a spill and/or environmental contamination occurs. For this reason, ecology will be appraised of and have an opportunity to comment on all proposed rule changes. Ecology will also be invited to participate on a committee which will be formed to address possible rule changes.

Process for Developing New Rule: At the end of the comment period for this CR-101, a committee will be formed. The committee will consist of individuals (businesses) who distribute pesticides. The members of the committee will be those who represent small and large businesses as well as users of pesticides. Ecology will also be invited to sit on the committee. EPA will also have an opportunity to comment and will receive all information relating to possible rule changes.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. The Pesticide Management Division is seeking written comments concerning this proposal. The comment period will be for thirty days, ending on July 8, 1999. Also please indicate in writing if you want continued information concerning the activities of the committee.

You may comment by writing to Washington State Department of Agriculture, Pesticide Management Division, P.O. Box 42589, Olympia, WA 98502-2589, or fax (360) 902-2093, or e-mail cweed@agr.wa.gov.

May 17, 1999
Bob Arrington
Assistant Director

WSR 99-11-058
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF AGRICULTURE
[Filed May 18, 1999, 9:37 a.m.]

Subject of Possible Rule Making: Amendments/modification of the rules relating to the pesticide penalty matrix are necessary at this time to compensate for the effects of chapter 43.05 RCW, Technical assistance programs. Possible changes to the penalty matrix may include the deletion of the first level of violation, leaving four instead of five levels, movement of license revocation to the second level of violation, a clear separation to allow a license suspension and or a civil fine and specific language to more clearly address violations relating to wood destroying organism inspections. Changes are also necessary to add more clarity in relation to how penalties are calculated.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapters 17.21, 15.58, and 34.05 RCW.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The penalty matrix rule was originally established and intended to provide an effective deterrent in relationship to the nature and magnitude of the violation. With the advent of chapter 43.05 RCW, Technical assistance programs, violators are generally provided an opportunity to come into compliance before a civil penalty can be issued. Since chapter 43.05 RCW provides first time violators an opportunity to correct the violation(s), without imposition of a civil penalty except in certain situations, the penalty matrix rule needs to be amended. The rule should be amended to compensate for the effects of chapter 43.05 RCW while still providing an effective, and fair deterrent that is not arbitrary nor capricious in nature.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The Environmental Protection Agency (EPA) regulates the use of pesticides primarily through the pesticide label. EPA has delegated WSDA pesticide management as the state lead agency for the enforcement of pesticides in Washington state. EPA will be appraised during the entire rule-making process and be offered an opportunity to provide comments. No other state agencies are involved.

Process for Developing New Rule: At the end of this comment period for his CR-101, an ad hoc committee from the Pesticide Advisory Board and other industry representatives will be formed. The committee will review the comments received from all parties and advise the department concerning potential changes to the penalty matrix.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. The Pesticide Management Division is seeking written comments concerning this proposal. The comment period will be for thirty days, ending on July 8, 1999. Also please indicate in writing if you want continued information concerning the activities of the committee.

You may comment by writing to Washington State Department of Agriculture, Pesticide Management Division, P.O. Box 42589, Olympia, WA 98502-2589, or fax (360) 902-2093, or e-mail cweed@agr.wa.gov.

May 17, 1999
Bob Arrington
Assistant Director

ual tanks exceeding 100,000 gallons), where fertilizers are stored.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapter 15.54 RCW.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The secondary containment rules relating to fertilizers were originally adopted to prevent/mitigate the potential adverse effects which may result concerning the containment of fertilizers in storage as well as areas in which fertilizers are mixed and loaded. Recent technology advances need to be considered for adoption into rule if such containment provide appropriate protection. This would allow additional flexibility for businesses to achieve compliance. Inspections have identified the need to clarify certain sections of this rule. Clarification is needed to insure compliance is accurately achieved.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: No other state or federal agency specifically regulate this subject. The Department of Ecology does regulate situations in which a spill and/or environmental contamination occurs. For this reason, ecology will be appraised of and have an opportunity to comment on all proposed rule changes. Ecology will also be invited to participate on a committee which will be formed to address possible rule changes.

Process for Developing New Rule: At the end of the comment period for this CR-101, a committee will be formed. The committee will consist of individuals (businesses) who distribute fertilizers. The members of the committee will be those who represent small and large businesses as well as users of fertilizers. Ecology will also be invited to sit on the committee.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. The Pesticide Management Division is seeking written comments concerning this proposal. Comments should be made by July 8, 1999. Also please indicate in writing if you want continued information concerning the activities of the committee.

You may comment by writing to Washington State Department of Agriculture, Pesticide Management Division, P.O. Box 42589, Olympia, WA 98502-2589, or fax (360) 902-2093, or e-mail cweed@agr.wa.gov.

May 17, 1999
Bob Arrington
Assistant Director

WSR 99-11-059

PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF AGRICULTURE

[Filed May 18, 1999, 9:38 a.m.]

Subject of Possible Rule Making: Amendments/modification of the rules related to fertilizer bulk storage and operational area containment are necessary at this time. Recent advances in technologies related to secondary containment have been made since the adoption of this rule. In addition, field inspections at facilities have identified the need for clarification in certain sections of the rule. Clarification is needed concerning field storage, and large facilities (individ-

WSR 99-11-061

PREPROPOSAL STATEMENT OF INQUIRY SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed May 18, 1999, 10:52 a.m.]

Subject of Possible Rule Making: School district eligibility for state salary allocations for three additional days in the school year.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 28A.150.290 and section 503(7) of ESSB 5180.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Rules are needed to implement the salary allocation formula for school district certificated instructional staff as defined in the 1999-2001 State Operating Appropriations Act. Rules will determine how districts can qualify for the enhanced funding for three additional days.

Process for Developing New Rule: Early solicitation of public comments and recommendations respecting new, amended or repealed rules, and consideration of the comments and recommendations in the course of drafting rules.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by sending written comments to Rules Coordinator, Legal Services, Office of Superintendent of Public Instruction, P.O. Box 47200, Olympia, WA 98504-7200, fax (360) 753-4201, TDD (360) 664-3631. For telephone assistance contact Ross Bunda, (360) 753-3585.

May 18, 1999

Dr. Terry Bergeson
Superintendent of
Public Instruction

WSR 99-11-062

PREPROPOSAL STATEMENT OF INQUIRY SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed May 18, 1999, 10:52 a.m.]

Subject of Possible Rule Making: Enhanced state funding to school districts for kindergarten through fourth grade (K-4) instructional staff.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 28A.150.290.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Rules are needed to implement the state general apportionment formula adopted in the 1999-2001 State Operating Appropriations Act. The old K-3 staff enhancement formula is replaced by a new K-4 staff enhancement formula.

Process for Developing New Rule: Early solicitation of public comments and recommendations respecting new, amended or repealed rules, and consideration of the comments and recommendations in the course of drafting rules.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by sending written comments to Rules Coordinator, Legal Services, Office of Superintendent of Public Instruction, P.O. Box 47200, Olympia, WA 98504-7200, fax (360)

753-4201, TDD (360) 664-3631. For telephone assistance contact Ross Bunda, (360) 753-3585.

May 18, 1999

Dr. Terry Bergeson
Superintendent of
Public Instruction

WSR 99-11-063

PREPROPOSAL STATEMENT OF INQUIRY SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed May 18, 1999, 10:53 a.m.]

Subject of Possible Rule Making: WAC 392-122-900 Categorical apportionment—General provision—Carryover prohibited.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 28A.150.290.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Rule changes are needed to implement state budget language permitting school districts to carry over up to ten percent of state allocations for special education and institutional education programs.

Process for Developing New Rule: Early solicitation of public comments and recommendations respecting new, amended or repealed rules, and consideration of the comments and recommendations in the course of drafting rules.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by sending written comments to Rules Coordinator, Legal Services, Office of Superintendent of Public Instruction, P.O. Box 47200, Olympia, WA 98504-7200, fax (360) 753-4201, TDD (360) 664-3631. For telephone assistance contact Calvin W. Brodie, (360) 664-2117.

May 18, 1999

Dr. Terry Bergeson
Superintendent of
Public Instruction

WSR 99-11-064

PREPROPOSAL STATEMENT OF INQUIRY SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed May 18, 1999, 10:53 a.m.]

Subject of Possible Rule Making: Chapter 392-139 WAC, School district maintenance and operation levy authority and eligibility for state local effort assistance allocations.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 28A.150.290.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Rules are necessary to implement SSB 5298 which increases maximum state local effort assistance to twelve percent for all school districts.

Process for Developing New Rule: Early solicitation of public comments and recommendations respecting new, amended or repealed rules, and consideration of the comments and recommendations in the course of drafting rules.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by sending written comments to Rules Coordinator, Legal Services, Office of Superintendent of Public Instruction, P.O. Box 47200, Olympia, WA 98504-7200, fax (360) 753-4201, TDD (360) 664-3631. For telephone assistance contact Steve Shish, (360) 753-6709.

May 18, 1999
Dr. Terry Bergeson
 Superintendent of
 Public Instruction

WSR 99-11-065
PREPROPOSAL STATEMENT OF INQUIRY
SUPERINTENDENT OF
PUBLIC INSTRUCTION
 [Filed May 18, 1999, 10:54 a.m.]

Subject of Possible Rule Making: WAC 392-140-600 through 392-140-685, School district eligibility for state special education safety net funding.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 28A.150.290 and section 507(7) of ESSB 5180.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Amendments to rules are needed to update special education safety net procedures and requirements for the 1999-2000 school year and thereafter.

Process for Developing New Rule: Early solicitation of public comments and recommendations respecting new, amended or repealed rules, and consideration of the comments and recommendations in the course of drafting rules.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by sending written comments to Rules Coordinator, Legal Services, Office of Superintendent of Public Instruction, P.O. Box 47200, Olympia, WA 98504-7200, fax (360) 753-4201, TDD (360) 664-3631. For telephone assistance contact Cal Brodie, (360) 664-2117.

May 18, 1999
Dr. Terry Bergeson
 Superintendent of
 Public Instruction

WSR 99-11-066

PREPROPOSAL STATEMENT OF INQUIRY

SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed May 18, 1999, 10:54 a.m.]

Subject of Possible Rule Making: WAC 392-121-138 Full-time equivalent enrollment of vocational education students.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 28A.150.290.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: To clarify procedures and requirements for school district counting and reporting of vocational students for state funding purposes.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: United States Department of Education. These rules will conform to federal standards for vocational programs.

Process for Developing New Rule: Early solicitation of public comments and recommendations respecting new, amended or repealed rules, and consideration of the comments and recommendations in the course of drafting rules.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by sending written comments to Rules Coordinator, Legal Services, Office of Superintendent of Public Instruction, P.O. Box 47200, Olympia, WA 98504-7200, fax (360) 753-4201, TDD (360) 664-3631. For telephone assistance contact Calvin W. Brodie, (360) 664-2117.

May 18, 1999
Dr. Terry Bergeson
 Superintendent of
 Public Instruction

WSR 99-11-067

PREPROPOSAL STATEMENT OF INQUIRY

SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed May 18, 1999, 10:55 a.m.]

Subject of Possible Rule Making: WAC 392-117-045 Corrections to data reported to the Superintendent of Public Instruction.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 28A.150.290 and 28A.300.040.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: To clarify procedures for reporting revised data affecting state funding before, during, and after an audit by the State Auditor's Office.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Staff from the Washington State Auditor's Office have met with this agency and concurred in the policy objectives of the proposed changes. The Auditor's Office will be kept informed and given an opportunity for input as the rules are developed.

Process for Developing New Rule: Early solicitation of public comments and recommendations respecting new, amended or repealed rules, and consideration of the comments and recommendations in the course of drafting rules.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by sending written comments to Rules Coordinator, Legal Services, Office of Superintendent of Public Instruction, P.O. Box 47200, Olympia, WA 98504-7200, fax (360) 753-4201, TDD (360) 664-3631. For telephone assistance contact Calvin W. Brodie, (360) 664-2117.

May 18, 1999

Dr. Terry Bergeson
Superintendent of
Public Instruction

WSR 99-11-068
PREPROPOSAL STATEMENT OF INQUIRY
UTILITIES AND TRANSPORTATION
COMMISSION

[Commission Docket No. UT-990261—Filed May 18, 1999, 1:10 p.m.]

Subject of Possible Rule Making: Commission Docket No. UT-990261. Telecommunications carrier-to-carrier service standards for the interface of interconnecting local exchange carriers.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 80.01.040(4), 80.04.160.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Competitive local exchange carriers (CLECs) are entering markets previously served exclusively by incumbent local exchange carriers (ILECs). In many instances, the CLEC is offering service with elements provided by the ILEC. CLEC customers may not receive service as quickly as the ILEC's own customers because of the required carrier-to-carrier interface. Standards may need to be developed to assure that ILEC and CLEC customers receive service equally. This may involve discussions about the need for electronic communications standards or other means by which nondiscriminatory service may be assured.

Rule discussions are likely to explore operating support systems (OSS), placing and filling orders, trunk blocking, repair, and related issues. Parties may raise other concerns, as well. The rule making inquiry also will consider whether any of the performance and reporting requirements imposed on U S WEST in the MCImetro complaint case (Docket UT-971063) should be applied more broadly, so as to cover incumbents other than U S WEST and CLECs other than MCImetro.

Purpose: The purpose of this inquiry is to explore means of optimizing competition among local exchange carriers by assuring nondiscriminatory service to consumers in which relationships among the carriers involved in providing service are invisible to consumers.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Applicable federal laws and regulations will be consid-

ered in this docket and the commission will monitor those provisions and pursue consistency with them unless good reason exists for differences.

Process for Developing New Rule: Agency study; and the commission will pursue consensus with affected groups.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting the Secretary, Washington Utilities and Transportation Commission, P. O. Box 47250, Olympia, WA 98504-7250, (360) 664-1234, fax (360) 586-1150. Persons may submit comments, as specified below, or may ask to be included in the commission's list of interested persons for the proceeding. The commission will post on its Internet web site at <http://www.wutc.wa.gov> all comments that it receives in digital format and a schedule and other information about this rule making.

WRITTEN COMMENTS: Written comments in response to the CR-101 from persons interested in the subject matter of this proposed rule making may be filed with the commission secretary, referencing Docket No. UT-990261, not later than **June 11, 1999**.

All commenters are asked, but not required, to file an original and ten copies of their written comments. The commission also requests, but does not require, that comments be provided on a 3 1/2 inch IBM formatted high-density disk, in WordPerfect version 6.1, 7, or 8, labeled with the docket number of this proceeding, the date, the commenter's name, and type of software used. Interested persons may also send written comments by electronic mail to records@wutc.wa.gov. The commission may offer additional opportunities to provide written comments. Interested persons may file additional written comments in response to any such invitation.

NOTICE OF WORKSHOP: A workshop will be held on **July 16, 1999, from 9:00 a.m. to 12:00 p.m.**, in the Commission's Hearing Room, Room 206, Second Floor, Chandler Plaza, 1300 South Evergreen Park Drive S.W., Olympia, WA. The commission's teleconference bridge line will be available for this workshop. A limited number of teleconference ports are available and will be assigned one to an organization, on a first come first served basis. Persons wishing to attend via the teleconference bridge line must contact Jennifer Watsek at (360) 664-1139 no later than 5:00 p.m., July 13, 1999. Questions may be addressed to Rebecca Beaton at (360) 664-1287 or e-mail at rbeaton1@wutc.wa.gov.

NOTICE

TO CONTINUE RECEIVING NOTICES AND INFORMATION ABOUT THIS RULE MAKING —The commission wants to ensure its mailings are sent to persons who are interested in the topic and want to receive that information. **ANY PERSON WHO COMMENTS** will continue to receive notices and information. If you do not submit comments but wish to remain on the mailing list for this rule making, please advise the records center by any one of the following methods: (1) Send a note with your name, address (or a copy of your mailing label), and telephone and fax numbers referencing Docket No. UT-990261, and the words "Please keep me on the mailing list"; or (2) e-mail your name, address, telephone and fax numbers, referencing Docket No. UT-990261, and the words

"Please keep me on the mailing list" to records@wutc.wa.gov. Please note that all information in the mailings will be accessible through the commission's Internet web site at <http://www.wutc.wa.gov/>. **THOSE PARTIES WHO DO NOT RESPOND MAY NOT RECEIVE FURTHER MAILINGS OR INFORMATION ON THE RULE MAKING.**

May 18, 1999
Carole J. Washburn
Secretary

WSR 99-11-069
PREPROPOSAL STATEMENT OF INQUIRY
UTILITIES AND TRANSPORTATION
COMMISSION

[Commission Docket No. UT-990582—Filed May 18, 1999, 1:11 p.m.]

Subject of Possible Rule Making: Collocation of competitive local exchange company facilities in the central offices of incumbent local exchange companies. Commission Docket No. UT-990582.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 80.01.040(4), 80.04.160.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The collocation of incumbent and competitive local exchange telecommunications companies in a common facility is one aspect of a competitive telecommunications environment that is mandated by the Telecommunications Act of 1996 (The Telecom Act) and that is the subject of Federal Communications Commission (FCC) Order FCC 99-48 and the Commission Final Order in Docket UT-960323 (September 1998). Collocation is a critically important aspect of competitive telecommunications service.

State commissions have jurisdiction over transactions that establish collocation and over disputes arising out of collocation transactions. Disputes have arisen among parties to interconnection agreements in Washington state on the subject of collocation. The commission does not now have rules specifically addressing collocation arrangements. This inquiry is intended to determine whether there is a need for commission rules on the subject and if so, what the rules should provide.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Pertinent federal law and Federal Communications Commission regulations will be considered in this docket. The commission will pursue consistency with the federal provisions unless it finds that good reason exists for differences.

Process for Developing New Rule: Agency study; and the commission will pursue consensus with affected groups.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting the Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, Olympia, WA 98504-7250, (360) 664-1234, fax (360) 586-1150. Persons may submit comments, as specified below, or may ask to be included in the commission's list of interested persons for the proceeding. The commission will post on its Internet web

site at <http://www.wutc.wa.gov> all comments that it receives in digital format and a schedule and other information about this rule making.

WRITTEN COMMENTS: Written comments in response to the CR-101 from persons interested in the subject matter of this proposed rule making may be filed with the commission secretary, referencing Docket No. UT-990582, not later than **June 11, 1999**.

All commenters are asked, but not required, to file an original and ten copies of their written comments. The commission also requests, but does not require, that comments be provided on a 3 1/2 inch IBM formatted high-density disk, in **WordPerfect version 6.1, 7.0, or 8.0**, labeled with the docket number of this proceeding, the date, the commenter's name, and type of software used. Interested persons may also send written comments by electronic mail to records@wutc.wa.gov. The commission may offer additional opportunities to provide written comments. Interested persons may file additional written comments in response to any such invitation.

NOTICE OF WORKSHOP: A workshop will be held on **July 15, 1999**, beginning at 9:30 a.m., in the Commission's Hearing Room, **Room 206**, Second Floor, Chandler Plaza, 1300 South Evergreen Park Drive S.W., Olympia, WA. The commission's teleconference bridge line will be available for this workshop. A limited number of teleconference ports are available and will be assigned one to an organization, on a first come first served basis. Persons wishing to attend via the teleconference bridge line must contact Jennifer Watson at (360) 664-1139 no later than 5:00 p.m., July 12, 1999. Questions may be addressed to Rebecca Beaton at (360) 664-1287 or e-mail at rbeaton1@wutc.wa.gov.

NOTICE

TO CONTINUE RECEIVING NOTICES AND INFORMATION ABOUT THIS RULE MAKING —The commission wants to ensure its mailings are sent to persons who are interested in the topic and want to receive that information. **ANY PERSON WHO COMMENTS** will continue to receive notices and information. If you do not submit comments but wish to remain on the mailing list for this rule making, please advise the records center by any one of the following methods: (1) Send a note with your name, address (or a copy of your mailing label), and telephone and fax numbers referencing Docket No. UT-990582, and the words "Please keep me on the mailing list"; or (2) e-mail your name, address, telephone and fax numbers, referencing Docket No. UT-990582, and the words "Please keep me on the mailing list" to records@wutc.wa.gov. Please note that all information in the mailings will be accessible through the commission's Internet web site at <http://www.wutc.wa.gov/>. **THOSE PARTIES WHO DO NOT RESPOND MAY NOT RECEIVE FURTHER MAILINGS OR INFORMATION ON THE RULE MAKING.**

May 18, 1999

Carole J. Washburn
Secretary

WSR 99-11-083

PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Aging and Adult Services Administration)

[Filed May 19, 1999, 9:47 a.m.]

Subject of Possible Rule Making: Amending the program eligibility for COPES, WAC 388-15-610.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.39A.030.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: These rules are being amended to make the COPES program eligibility requirements identical to that of Medicaid nursing facility care as required by federal regulations (42 C.F.R. 441.302(c)).

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: Health Care Financing Administration.

Process for Developing New Rule: The department will schedule meetings with client advocates and other representative stakeholders to review and offer suggestions, including drafting language before publishing the rules.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. The department will notify representative stakeholders and client advocates of meetings and provide draft language to interested parties. For further information, interested parties may also contact Kevin Krueger, Office Chief, Home and Community Programs, P.O. Box 45600, Mailstop 45600, Olympia, WA 98504-5600, phone (360) 493-2578, e-mail kruegkd@dshs.wa.gov.

May 18, 1999

Marie Myerchin-Redifer, Manager
 Rules and Policies Assistance Unit

WSR 99-11-084

PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Medical Assistance Administration)

[Filed May 19, 1999, 9:48 a.m.]

Subject of Possible Rule Making: Repealing WAC 388-86-090 Physical therapy and 388-87-090 Payment—Physical therapy and related services; and new WAC 388-545-0500 Physical therapy.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.08.090 and 74.09.520.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: To clarify program requirements to comply with criteria in the Governor's Executive Order 97-02, and to combine all therapies into one therapies chapter, chapter 388-545 WAC. WAC 388-545-0500 is being established for physical therapy.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: The department invites the interested public to review and provide input on the draft language of this WAC. Draft material and information about how to participate are available by contacting the DSHS representative identified below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Kathy Sayre, Program Assistance and Support Services, Medical Assistance Administration, Olympia, Washington, 98504-5530, phone (360) 586-0355, fax (360) 753-7315, TTY 1-800-848-5429, e-mail sayrek@dshs.wa.gov.

May 19, 1999

Marie Myerchin-Redifer, Manager
 Rules and Policies Assistance Unit

WSR 99-11-088

PREPROPOSAL STATEMENT OF INQUIRY
EMPLOYMENT SECURITY DEPARTMENT

[Filed May 19, 1999, 10:21 a.m.]

Subject of Possible Rule Making: Employer records, specifying the number of years employment, business and financial records are to be retained and detailing the information to be maintained in those records.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 50.12.010 and 50.12.040.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: To amend current WAC 192-12-050 and make it conform to Governor Locke's Executive Order 97-02. This WAC is being renumbered WAC 192-310-050 as part of our regulatory reform process at the Employment Security Department. In addition our department is keeping more in agreement with the Department of Labor and Industries' WAC 296 17-35201 Recordkeeping and retention adopted in 1995. We have maintained our unique subsection (j) relating to discharge of workers and the cause of quits, if known. We have removed the section on farm operators and created a separate rule. In addition we have clarified the language of our rule to make it easier to understand and administer.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The other state agencies that have similar rules are the Department of Labor and Industries and the Department of Revenue. As stated above we are amending our rule to be closer to that of the Department of Labor and Industries while still maintaining the unique applicability of section (j) relating to discharge and/or quits that are applicable to unemployment insurance statutes and rules.

Process for Developing New Rule: Informal meetings with stakeholders and interested parties.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting George Mante, UI Tax Regulatory Reform Coordinator, UI Tax Administration, Employment

Security Department, P.O. Box 9046, Olympia, WA 98507-9046, fax (360) 902-9556.

April 30, 1999
Carver Gayton
Commissioner

NEW SECTION

WAC 192-310-050 Employer records. The commissioner requires every employer to keep true and accurate business, financial, and employment records which are deemed necessary for the effective administration of Chapter 50.12 RCW.

Every employer shall with respect to each worker, make, keep, and preserve original records containing all of the following information for four calendar years following the calendar year in which employment occurred:

- a. The name of each worker;
- b. The Social Security number of each worker;
- c. The beginning date of employment for each worker and, if applicable, the separation date of employment of each worker;
- d. The basis upon which wages and/or remuneration are paid to each worker;
- e. The location where such services were performed;
- f. A summary time record for each worker showing the calendar day or days of the week work was performed and the actual number of hours worked each day;
- g. The workers' total gross pay period earnings;
- h. The specific sums withheld from the earnings of each worker, and the purpose of each sum withheld to equate to net pay; and
- i. The cause for any discharge where a worker was separated from the job due to discharge; or the cause of any quit where a worker quit the job if the cause for the quit is known.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 192-12-050 Employer records.

WSR 99-11-089

PREPROPOSAL STATEMENT OF INQUIRY EMPLOYMENT SECURITY DEPARTMENT

[Filed May 19, 1999, 10:23 a.m.]

Subject of Possible Rule Making: Employer records—Farm operator.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 50.12.010 and 50.12.040.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: To amend current WAC 192-12-050 and make it conform to Governor Locke's Executive Order 97-02. This WAC is being renumbered WAC 192-310-050 as part of our regulatory reform process at the Employment Security Department. We are removing from

the old WAC 192-12-050 (1)(j) relating to farm operators. We are creating a separate rule relating strictly to this situation entitled WAC 192-310-055 Employer records—Farm operator. We are including two additional items in this WAC as requirements to bring our rules more in line with those of the Department of Labor and Industries, we are asking for the name of the crew leader, or contractors and evidence of the farm contractor's license (chapter 19.30 RCW).

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The other state agencies that have similar rules are the Department of Labor and Industries and the Department of Revenue. As stated above we are amending our rule to be closer to that of the Department of Labor and Industries while still maintaining the unique applicability of subsections (b) and (c) relating to the types of services performed and the number of persons performing such services.

Process for Developing New Rule: Informal meetings with stakeholders and interested parties.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting George Mante, UI Tax Regulatory Reform Coordinator, UI Tax Administration, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, fax (360) 902-9556.

April 30, 1999
Carver Gayton
Commissioner

NEW SECTION

WAC 192-310-055 Employer records—Farm operator or farm labor contractor. The commissioner requires every employer to keep true and accurate employment records under Chapter 50.12 RCW.

(1) Farm operators, or farm labor contractors must comply with the rules set forth in WAC 192-310-050 employer records.

(2) Farm operators contracting with a crew leader or a farm labor contractor, must make, keep, and preserve, original records containing the following information:

- (a) the inclusive dates of the contract;
- (b) the types of services performed;
- (c) the number of persons performing such services;
- (d) the name of the contractor or crew leader; and
- (e) evidence of the Farm Labor Contractor's License as required under Chapter 19.30 RCW.

WSR 99-11-099

PREPROPOSAL STATEMENT OF INQUIRY HEALTH CARE AUTHORITY (Public Employees Benefits Board)

[Order 99-04—Filed May 19, 1999, 11:14 a.m.]

Subject of Possible Rule Making: Revise WAC 182-12-111 to condense rule into one standard for group participation. Revise WAC 182-12-119 to clarify language for extended dependents.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 41.05.160.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: WAC 182-12-111 Condenses rules for different eligible groups into one standard for group participation requirements and eliminates duplication; and WAC 182-12-119 clarifies language regarding extended dependents.

Process for Developing New Rule: Negotiated rule making and agency held public meetings with board (PEBB) to discuss and approve the proposed changes - public hearings held March 29, 1999, and April 20, 1999.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Mich'l Needham, Public Employees Benefits Board, P.O. Box 42684, Olympia, WA 98504-2684, phone (360) 923-2735, fax (360) 923-2602. Formal adoption of rules will occur in conjunction with a public board (PEBB) meeting at a public hearing.

May 19, 1999

Elin Meyer

Rules Coordinator

WSR 99-11-100

PREPROPOSAL STATEMENT OF INQUIRY

HEALTH CARE AUTHORITY

(Public Employees Benefits Board)

[Order 99-03—Filed May 19, 1999, 11:15 a.m.]

Subject of Possible Rule Making: Revise WAC 182-08-095 to condense rules into one standard for waiving medical coverage.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 41.05.160.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Condensing rules for different eligible groups into one standard for waiving medical coverage.

Process for Developing New Rule: Negotiated rule making; and agency held public meetings with board (PEBB) to discuss and approve the proposed changes - public hearings held March 29, 1999, and April 20, 1999.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Mich'l Needham, Public Employees Benefits Board, P.O. Box 42684, Olympia, WA 98504-2684, phone (360) 923-2735, fax (360) 923-2602. Formal adoption of rules will occur in conjunction with a public board (PEBB) meeting at a public hearing.

May 19, 1999

Elin Meyer

Rules Coordinator

WSR 99-11-105

PREPROPOSAL STATEMENT OF INQUIRY

DEPARTMENT OF REVENUE

[Filed May 19, 1999, 11:23 a.m.]

Subject of Possible Rule Making: WAC 458-18-010 Deferral of special assessments and/or property taxes.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 84.38.020 and 84.38.180.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: This rule provides definitions of terms used in administering the program authorizing the deferral of special assessments and/or property taxes under chapter 84.38 RCW. The current version of this rule was adopted in 1975. Since its adoption, numerous questions about certain terms related to the deferral program have arisen. The purpose of the proposed rule is to provide definitions of more terms necessary to administer the program. The amended rule will provide clarity and information about the deferral program to taxpayers and local taxing officials.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Modified negotiated rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. Written comments may be submitted by mail, fax, or at the public meeting. Oral comments will be accepted at the public meeting. A preliminary draft of the proposed changes is available upon request. Written comments on and/or requests for copies of the rule may be directed to Kim M. Qually, Counsel, Legislation and Policy, P.O. Box 47467, Olympia, WA 98504-7467, phone (360) 664-0086, fax (360) 664-0693, e-mail kimq@dor.wa.gov.

Location and Date of Public Meeting: On July 7, 1999, at 10:00 a.m., Evergreen Plaza Building, 711 Capitol Way South, Audit Division Conference Room, 3rd Floor, Olympia, WA.

Assistance for Persons with Disabilities: Contact Ginny Dale no later than ten days before the hearing date TDD 1-800-451-7985, or (360) 586-0721.

May 19, 1999

Russell W. Brubaker

Assistant Director

Legislation and Policy Division

NO EXPEDITED REPEALS FILED IN THIS ISSUE

EXPEDITED REPEAL



WSR 99-09-050
PROPOSED RULES
COMMISSION ON
JUDICIAL CONDUCT
[Filed April 19, 1999, 1:06 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule: Commission on Judicial Conduct rules of procedure (CJCRP).

Purpose: To amend and clarify existing rules of procedure and confidentiality, and to add a new rule for compliance proceedings.

Statutory Authority for Adoption: Article IV, Section 31, Washington State Constitution.

Statute Being Implemented: Chapter 2.64 RCW and Article IV, Section 31, Washington State Constitution.

Summary: The proposed action would modify existing rules of procedure and would create a new section for post-decision proceedings before the commission.

Reasons Supporting Proposal: The commission is directed to provide for rules of procedure and for confidentiality.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Akana, P.O. Box 1817, Olympia, WA 98507, (360) 753-4585.

Name of Proponent: Commission on Judicial Conduct, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: The new rule and amendments to existing rules clarify procedures used in proceedings before the commission.

Proposal Changes the Following Existing Rules: The amendments to existing rules would be clarified in proceedings before the commission.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No small business impact statement is required for this proposal by chapter 19.85 RCW. The rules are procedural in nature.

RCW 34.05.328 does not apply to this rule adoption. The action would amend or adopt procedural rules.

Hearing Location: The Heathman Lodge, 7801 N.E. Greenwood Drive, Vancouver, WA 98662, on August 6, 1999, at 11:00 a.m.

Assistance for Persons with Disabilities: Contact Kathy Sullivan by July 30, 1999, TDD (360) 753-4585.

Submit Written Comments to: Commission on Judicial Conduct, P.O. Box 1817, Olympia, WA 98507, fax (360) 586-2918, by July 21, 1999.

Date of Intended Adoption: August 6, 1999.

April 19, 1999

David Akana
Executive Director

COMMISSION ON JUDICIAL CONDUCT
RULES OF PROCEDURE (CJCRP)

AMENDATORY SECTION (Amending Order 96-001, filed 8/13/96)

TABLE OF RULES
PREAMBLE
TERMINOLOGY

SECTION I. ORGANIZATION AND STRUCTURE

RULE 1 DISCIPLINARY AUTHORITY

RULE 2 THE COMMISSION ON JUDICIAL CONDUCT

- (a) Purpose.
- (b) Jurisdiction.

RULE 3 ORGANIZATION AND AUTHORITY OF THE COMMISSION

- (a) Meetings.
- (b) Officers.
- (c) Quorum.
- (d) Powers and duties.
- (e) Recusal.
- (f) Presiding Officer, Authority.

RULE 4 INVESTIGATIVE OFFICER

- (a) Appointment.
- (b) Powers and duties.

RULE 5 COMMISSION COUNSEL

- (a) Appointment.
- (b) Powers and duties.

SECTION II. GENERAL PROVISIONS

RULE 6 DISCIPLINE

- (a) Grounds.
- (b) Discipline.
- (c) Mitigating/aggravating factors.
- (d) Required appearance.

RULE 7 PROOF

RULE 8 CIVIL RULES APPLICABLE

RULE 9 RIGHT TO COUNSEL

RULE 10 EX PARTE CONTACTS

RULE 11 CONFIDENTIALITY

- (a) Proceedings.
- (b) Information.

RULE 12 [Reserved]

RULE 13 SERVICE

RULE 14 SUBPOENA POWER

- (a) Oaths.
- (b) Subpoenas for investigation, deposition, or hearing.
- (c) Enforcement of subpoenas.
- (d) Quashing subpoena.
- (e) Service, witnesses, fees.

RULE 15 [Reserved]

RULE 16 NOTIFICATION (TO COMPLAINANT) OF FINAL DISPOSITION

SECTION III. DISCIPLINARY PROCEEDINGS

RULE 17 SCREENING AND INVESTIGATION

- (a) General.
- (b) Screening.

PROPOSED

(c) Notice of complaint to respondent.

(d)) Preliminary investigation.

(d) ((e))) Initial proceedings.

(e) Notice of complaint to respondent.

RULE 18 [Reserved]

RULE 19 STATEMENT OF CHARGES

(a) General.

(b) Amendments to statement of charges or answer.

RULE 20 ANSWER

(a) Time.

(b) Waiver of privilege.

RULE 21 FAILURE TO ANSWER/FAILURE TO APPEAR

(a) Failure to answer.

(b) Failure to appear.

RULE 22 DISCLOSURE AND DISCOVERY

(a) Disclosure.

(b) Discovery following statement of charges.

RULE 23 STIPULATIONS

(a) Submission ((Approval)).

(b) Entry of Order ((of discipline)).

RULE 24 HEARING

(a) Scheduling.

(b) Conduct of hearing.

(c) Dismissal or recommendation for discipline.

(d) Submission of the report.

(e) Motion for reconsideration.

RULE 25 REVIEW BY SUPREME COURT

RULE 26 [Reserved]

SECTION IV. SPECIAL PROCEEDINGS

RULE 27 CASES INVOLVING ALLEGATIONS OF MENTAL OR PHYSICAL INCAPACITY

(a) Initiation of incapacity proceedings.

(b) Proceedings to determine incapacity generally.

(c) Waiver.

(d) Stipulated disposition.

(e) Reinstatement from incapacity status.

RULE 28 REINSTATEMENT OF ELIGIBILITY

RULE 29 COMPLIANCE PROCEEDINGS

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Commission on Judicial Conduct and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Order 96-001, filed 8/13/96)

TERMINOLOGY

Definitions. In these rules: "Admonishment" means a written action of the commission of an advisory nature that cautions a respondent not to engage in certain proscribed behavior. An admonishment may include a requirement that the respondent follow a specified corrective course of action. Admonishment is the least severe disciplinary action the commission can issue.

"Censure" means a written action of the commission that requires a respondent to appear personally before the commission and that finds that conduct of the respondent violates a rule of judicial conduct, detrimentally affects the integrity of the judiciary, undermines public confidence in the admin-

istration of justice, and may or may not require a recommendation to the supreme court that the respondent be suspended (with or without pay) or removed. A censure shall include a requirement that the respondent follow a specified corrective course of action. Censure is the most severe disciplinary action the commission can issue.

"Chair" means one of the members elected by the commission to perform the duties of the chair and includes the acting chair.

"Commission" means the commission on judicial conduct.

"Commission counsel" means the legal advisor for the commission.

"Complaint" means information in any form from any source received by the commission that alleges or from which a reasonable inference can be drawn that a judge committed misconduct or is incapacitated. If there is no written complaint from another person, the investigator's written statement of the allegations constitutes the complaint.

"Disability" means "incapacity."

"Discipline" includes admonishment, reprimand, censure, censure with recommendation for suspension, censure with recommendation for removal, and any other sanction the commission is authorized to impose.

"Disciplinary counsel" means a lawyer retained by the commission to investigate and/or to represent the commission in designated proceedings.

"Documentary evidence" means any business record, public record, handwriting, typewriting, printing, Photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, drawings, charts, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.

"Fact-Finder" means the commission, or at the discretion of the commission, a subcommittee of the commission or a master appointed by the commission. The fact-finder shall compile the evidentiary record upon which the commission shall base its decision.

"Hearing" means a public proceeding at which the issues of law and fact are tried before the commission.

"Incapacity" means any physical, mental, or emotional condition from which a respondent suffers which is permanent or likely to become permanent and which seriously interferes with the performance of judicial duties. As used in these rules, "incapacity" shall have the same meaning as "disability" in Washington State Constitution, Article IV, Section 31.

"Investigation" means an inquiry, including a search for and examination of evidence concerning allegations, divided into two stages: Preliminary investigation conducted after receipt of the complaint and initial proceedings conducted after authorization from the commission.

"Investigative officer" means a person or persons employed or retained by the commission who investigates and reports the findings to the commission.

"Judge" means those officers of a judicial system who perform judicial functions and who are subject to the Code of Judicial Conduct, such as justices of the supreme court,

judges of the court of appeals, judges of the superior court, judges of any court organized under Titles 3, 35, or 35A RCW, judges pro tempore, court commissioners, and magistrates. The term includes full-time and part-time judges and judges who have been or have not been admitted to the practice of law in Washington.

"Medical privilege" shall refer to any confidential, privileged communication between respondent and any health care provider recognized by law.

"Meeting" includes a regular meeting or a special meeting. Business meetings are subject to the Open Public Meetings Act, chapter 42.30 RCW. Investigations, initial proceedings, public hearings, and executive sessions involving the discipline or retirement of a judge are governed by Article IV, Section 31, of the state Constitution and are exempt from chapter 42.30 RCW.

"Member" means a member of the commission and includes alternates acting as members during a member's disqualification or inability to serve.

"Misconduct" means any conduct by a respondent constituting grounds for discipline.

"Party" means the respondent or the commission as the context suggests.

"Presiding Officer" shall be the person designated by the Chair or the Commission to perform the duties of the presiding officer for a specific matter.

"Public member" means a member of the commission who is neither a lawyer nor a judge.

"Record" means the formal statement of charges and all documents filed thereafter in a proceeding including the verbatim report of the hearing on the statement of charges if a verbatim report has been prepared.

"Reprimand" means a written action of the commission that requires a respondent to appear personally before the commission and that finds that the conduct of the respondent is a violation of the Code of Judicial Conduct and does not require censure or a recommendation to the supreme court that the respondent be suspended or removed. A reprimand shall include a requirement that the respondent follow a specified corrective course of action. Reprimand is an intermediate level of disciplinary action the commission can issue.

"Respondent" means the judge or former judge who is the subject of a complaint or statement of charges.

"Statement of charges" means the formal charges of judicial misconduct or incapacity, including any amendment thereto, filed by the commission upon a determination of probable cause.

Comment:

This amendment describes "presiding officer." The authority of the presiding officer is added in proposed Rule 3(f).

AMENDATORY SECTION (Amending Order 96-001, filed 8/13/96)

RULE 3. ORGANIZATION AND AUTHORITY OF THE COMMISSION

(a) Meetings. Meetings shall be scheduled as necessary. The commission shall meet periodically as determined by the commission to consider administrative and other matters.

The chair may call meetings of the commission other than regularly scheduled meetings upon the chair's own motion; the chair shall call a meeting upon the written request of three members of the commission. Business meetings may be conducted by telephone conference calls or other telecommunications means within the provisions of the Open Public Meetings Act, whereby each participant in the meeting can simultaneously hear the others and further, whereby at least one site, identified by proper notice, shall provide the capability for members of the public to hear the conference. Other meetings and executive sessions may be conducted by telephone conference calls.

(b) Officers. The commission shall elect one of its members to serve as chair, another to serve as vice-chair, and another to serve as secretary for such terms as the commission shall determine. The vice-chair shall perform the duties of the chair whenever the chair is absent or unable to act.

(c) Quorum. Six members of the commission shall constitute a quorum for the transaction of business.

A vote of six members of the commission shall be required to adopt rules.

A finding of probable cause shall require the concurrence of six members of the commission.

The concurrence of six members of the commission shall be required to make a decision in a proceeding.

The chair will arrange for an alternate member selected by the appropriate appointing authority to serve in the place of a member whenever a member is disqualified or unable to serve. The alternate member so called upon shall have all the authority of a member of the commission during the time the member is unable to serve.

(d) Powers and duties. The duty and authority of the commission shall include but not be limited to:

(1) Adopting rules of procedure for discipline and incapacity proceedings;

(2) Appointing commission counsel;

(3) Employing an executive director and other staff;

(4) Appointing investigative officers;

(5) Retaining disciplinary counsel;

(6) Reviewing the recommendation of the investigative officer and/or disciplinary counsel after screening and a preliminary investigation, and either authorizing a full investigation of a complaint against a respondent in initial proceedings or dismissing the complaint;

(7) Reviewing the findings of the investigative officer and/or disciplinary counsel after a full investigation of a complaint against a respondent in initial proceedings and dismissing the matter, making a finding of probable cause, or, after making a finding of probable cause, instructing disciplinary counsel to file a statement of charges;

(8) Ruling on prehearing motions, conducting hearings on a statement of charges, and making findings, conclusions, and a decision;

(9) Where appropriate, making recommendations to the supreme court for discipline pursuant to Rule 24; or

(10) Dismissing the case.

(e) Recusal.

(1) A member of the commission should disqualify himself or herself if his or her impartiality might reasonably be

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questioned because of a conflict of interest or personal bias or prejudice.

(2) If a member who is a judge or judge pro tem becomes a respondent to a statement of allegations (Rule 17) or statement of charges (Rule 19), that member shall be disqualified from attending further meetings and shall not perform any commission duties until proceedings on the allegations and/or charges are completed. Should the member be disciplined by the commission, the issue of that member's continuing participation on the commission shall be referred to the member's appointing authority for a decision on whether the member should continue to serve on the commission on judicial conduct.

(3) Respondent may file an affidavit challenging for cause any member who respondent believes cannot impartially consider the statement of charges. The affidavit must be filed within seven days after service of the notice of hearing identifying those members assigned to conduct the hearing. The commission chair, or vice-chair, will decide any challenge for cause if the member does not disqualify himself or herself.

(f) Presiding Officer, Authority. The presiding officer shall have authority to:

(1) Determine the order of presentation of evidence;
(2) Identify the materials initially to be provided to the participating members;

(3) Administer oaths and affirmations;
(4) Issue subpoenas;

(5) Confer with participating panel members on all procedural matters, objections, and motions;

(6) Rule on offers of proof and receive relevant evidence;

(7) Direct the course of additional questioning of witnesses by participating panel members during the course of a public disciplinary proceeding;

(8) Take any appropriate action necessary to maintain order during the hearing;

(9) Permit or require oral argument or briefs and determine the time limits for submission thereof;

(10) Chair the deliberations of the participating members;

(11) Announce the commission decision in an open session;

(12) Take any other action necessary and authorized by any applicable statute or rule or by the hearing panel;

(13) Waive any requirement of these rules applicable to a public proceeding unless a party shows that it would be prejudiced by such a waiver.

Comments:

Amendments to Rule 3 (e)(2) adds guidelines for member recusals. A new proposed Rule 3(f) sets forth the authority of the presiding officer.

Applicability of the Open Public Meetings Act: The Open Public Meetings Act does not apply to Commission judicial disciplinary proceedings. Wa. Const. Art. IV Sec. 31(10); RCW 2.64.115; and RCW 42.30.140(2).

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Order 96-001, filed 8/13/96)

RULE 6. DISCIPLINE

(a) Grounds. Any conduct which violates the Code of Judicial Conduct is grounds for discipline which shall be issued or administered in open session.

(b) Discipline. The commission shall have the authority to:

- (1) Admonish;
- (2) Reprimand;
- (3) Censure;

(4) Censure and recommend to the supreme court the suspension of the respondent with or without pay;

(5) Censure and recommend to the supreme court the removal of the respondent; and

(6) Impose any other sanction the commission is authorized to administer. The vote of any member of the commission to impose a particular disciplinary action shall be deemed an assent to impose all lesser disciplinary actions.

(c) Mitigating/aggravating factors.¹ Whenever the commission finds grounds for discipline, it shall consider the following nonexclusive factors in determining the appropriate discipline to be ordered:

(1) Whether the misconduct is an isolated instance or evidence of a pattern of conduct;

(2) The nature, extent, and frequency of occurrence of the acts of misconduct;

(3) Whether the misconduct occurred in or out of the courtroom;

(4) Whether the misconduct occurred in the judge's official capacity or in the judge's private life;

(5) Whether the judge has acknowledged or recognized that the acts occurred;

(6) Whether the judge has evidenced an effort to change or modify the conduct;

(7) The judge's length of service on the bench;

(8) Whether there has been prior public disciplinary action concerning the judge;

(9) The effect the misconduct has upon the integrity of and respect for the judiciary;

(10) The extent to which the judge exploited the judicial position to satisfy personal desires; and

(11) Whether the judge cooperated with the commission investigation and proceeding.

(12) Respondent's compliance with an opinion by the ethics advisory committee shall be considered by the commission as evidence of good faith.

(d) Required appearance. Respondent shall personally appear before the commission to receive an order imposing a reprimand or a censure.

Comments:

Proposed Rule 6 (c)(12) is the new location for proposed former Rule 24 (b)(6). Proposed Rule 6(d) states what the statute requires. RCW 2.64.010 (2&6).

¹ The factors are set forth in *In re Deming*, 108 Wn.2d 82, 119-120 (1987).

AMENDATORY SECTION (Amending Order 96-001, filed 8/13/96)**RULE 7. PROOF**

Findings of violations of the Code of Judicial Conduct or incapacity shall be based upon clear, cogent, and convincing evidence. "Clear, cogent and convincing" means highly likely. A contention has been proved by clear, cogent and convincing evidence if it is established that it is highly likely to be true. This level of proof requires a greater quantity of evidence than "preponderance of the evidence," which means that a contention is simply more likely to be true than not true, but less than the evidence required by "beyond a reasonable doubt," which means that a contention almost certainly is true.

Comment:

As part of its rules of procedure, the Commission adopted the "clear, cogent, and convincing" standard for finding violations of the Code of Judicial Conduct or for finding an incapacity. This standard was adopted by the original members of the Commission consistent with the recommendations of the American Bar Association for judicial conduct agencies.² The "clear, cogent and convincing" standard continues to be used by the great majority of judicial conduct agencies across the United States, including the present Washington Commission. It is a standard of proof that requires more than the "preponderance" standard commonly found in civil matters but less than the "beyond a reasonable doubt" standard in criminal cases. Like the "clear preponderance" standard used in the Washington lawyer discipline cases,³ both standards can be described as being an intermediate standard of proof that is lower than the beyond a reasonable doubt standard used in criminal proceedings, but more than the preponderance standard used in civil actions.

The "clear, cogent, and convincing" burden of proof standard has remained unaffected through two constitutional amendments.

² See Professional Discipline for Lawyers and Judges, National Center for Professional Responsibility and the American Bar Association, 1979, pages 44-45. The Commission adopted former Rule 14(d) which stated: "The fact-finder must find by clear, cogent, and convincing evidence that the judge has violated a rule of judicial conduct or that the judge has a disability which is or is likely to become permanent and which seriously interferes with the performance of judicial duties."

³ RLD 4.11(b).

AMENDATORY SECTION (Amending Order 96-001, filed 8/13/96)**RULE 10. EX PARTE CONTACTS**

Following filing of a statement of charges, members of the commission participating in the public hearing shall not engage in ex parte communications regarding that (a) case with respondent, respondent's counsel, disciplinary counsel, or any witness, except that such members (staff) may communicate with staff (disciplinary counsel) and others as required to perform their duties in accordance with these rules.

Comments:

Rule 10 is proposed to be modified to state that members participating in a hearing will not engage in ex parte communications. The term "ex parte" is described in Canon 3 (A)(4) of the Code of Judicial Conduct.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Order 96-001, filed 8/13/96)**RULE 11. CONFIDENTIALITY****(a) Proceedings.**

(1) Prior to the filing of a statement of charges, all proceedings shall be confidential except as provided in Rule 17(c).

(2) After the filing of a statement of charges, all subsequent proceedings shall be public except as may be provided by protective order. The statement of charges alleging judicial misconduct or incapacity shall be available for public inspection. The records of the initial proceedings that formed the basis of a finding of probable cause shall become public on the first day of the hearing. The hearing before the commission shall be open to the public; however, all deliberations of the commission in reaching a decision on the statement of charges shall be confidential.

(b) Information.

(1) Prior to the filing of a statement of charges, all information relating to a complaint shall be held confidential by the commission, disciplinary counsel, and staff, except that the commission may disclose information:

(A) When the commission has determined that there is a need to notify another person or agency in order to protect the public or the administration of justice; or

(B) Upon waiver in writing by respondent:

(i) If public statements that charges are pending before the commission are substantially unfair to respondent; or

(ii) If respondent is publicly associated with violating a rule of judicial conduct or with having an incapacity, and the commission, after a preliminary investigation, has determined there is no basis for further proceedings or for a recommendation of discipline or retirement.

(2) Except as provided in these rules, the fact that a complaint has been made, or a statement has been given to the commission, and all papers and matters submitted to the commission together with the investigation and initial proceedings conducted pursuant to these rules, shall be confidential. Any person providing information to the commission shall not disclose the existence of such investigation to a third party before the commission files a statement of charges, (or) dismisses the complaint (is dismissed), or otherwise closes the investigation or initial proceeding. However, the person filing a complaint or giving a statement to the commission is not prohibited by these rules from informing any third party, or the public generally, of the factual basis upon which a complaint is based, or a statement is given.

(3) The commission may inform a complainant or potential witness when respondent is first given notice of misconduct or incapacity allegations.

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The name of the respondent, in the discretion of the commission, shall not be used in written communication to the complainant.

(4) Disciplinary counsel's work product and records of the commission's deliberations shall not be disclosed.

(5) Investigative files and records prior to the date of the filing of the statement of charges shall not be disclosed unless they formed the basis for probable cause. Those records of the initial proceeding that were the basis of a finding of probable cause shall become public as of the date of the fact-finding hearing.

(6) Informal action taken by the commission prior to May 5, 1989, when amended rules were adopted eliminating private informal dispositions, may, in the commission's discretion, be disclosed to the Washington State Bar Association, American Bar Association, a judicial authority, any judicial appointive, selection or confirmation authority, or to law enforcement agencies, when required in the interests of justice, or to maintain confidence in the selection of judges or administration of the judiciary. The person to whom the information relates shall be informed of any information released.

(7) Unless otherwise permitted by these rules, or from public documents, or from a public hearing, no person shall disclose information obtained by that person during commission proceedings or from papers filed with the commission. Any person violating confidentiality rules may be subject to a proceeding for contempt in superior court.

Comment:

Rule 11 (b)(2) is proposed to be modified to include all actions that close an investigation or complaint.

Public Access to Initial Proceedings Records: The 1989 amendments to the State Constitution and to the statutes, required the Commission to make public the records of the initial proceedings upon which it based its finding of probable cause. By statute, these records become subject to public disclosure on the first day of the public fact-finding hearing. The State Constitution otherwise mandates confidentiality. The statute,⁴ the 1989 Voter's Pamphlet description⁵ and State Constitution do not suggest that everything in the records of the initial proceeding must be disclosed. The operative language is clearly different.

RCW 2.64.111, among others, and the constitutional amendment were presented to the voters as a "single package." The constitutional and statutory amendments read together, the described effect of the amendment in the Voter's Pamphlet, and the rules adopted by the Commission are consistent with each other: Those records of the initial proceeding that were the basis of the finding of probable cause shall become public as of the date of the fact-finding hearing. Nothing more; nothing less.⁶ See also, Garner v. Cherberg, 111 Wn.2d 811, 820-21 (1988).

Before Commission records of the initial proceedings can be disclosed as public documents, the Commission must first make a finding of probable cause. Next, the records must be those records of the initial proceeding that were the basis of the finding of probable cause. Matters unrelated to the basis of the finding must retain their confidentiality mandated by the State Constitution. By rule, the participating

commission members identify the records for the basis of their finding.

Sharing Investigative Material With Law Enforcement Officials: The Commission adopted CJCRP 11 (b)(1)(A) pursuant to its constitutional and statutory authority to promulgate rules for confidentiality. The rule is similar to ABA Model Rule 11 and provides a means to share information with another person or agency. The Commission has authorized release of information under this provision from time to time. It is not appropriate for the Commission, in addition, to publicize the release of such information.

Recognition of First Amendment Rights: The Commission's rules mandate confidentiality on other persons only during the investigative (confidential) stages to preserve the state's compelling interest in preserving the integrity of its judiciary. The rules are narrowly tailored to achieve the state's compelling interests consistent with Kamasinski v. Judicial Review Council, 44 F.3d 106 (2nd Cir. 1994). First, there is no restriction concerning the substance of a person's complaint or testimony.⁷ Second, the fact that a complaint has been filed with the Commission or testimony given to the Commission is susceptible to a limited ban. Third, information a person obtains through interaction with a judicial conduct commission is susceptible to a limited ban. The limited ban is effective only so long as the Commission acts in its investigatory capacity. After a complaint has been dismissed or the Commission takes public action, the complainant, any witness and the judge may speak freely. See CJCRP 11 (b)(2). The Commission and its staff are nonetheless bound by confidentiality even though a complaint has been dismissed or proceeding concluded. The rules of confidentiality are consistent with the State Constitution and current First Amendment concerns expressed in Kamasinski v. Judicial Review Council, *supra*.

⁴ RCW 2.64.111 provides in part: "As of the date of a public hearing, all those records of the initial proceeding that were the basis of a finding of probable cause are subject to the public disclosure requirements of chapter 42.17 RCW."

⁵ "If a hearing is then held, the hearing is open to the public and all of the records of the initial proceeding that provided the basis for the Commission's conclusion are to be made public."

⁶ In this regard *In re Deming*, 108 Wn.2d 82, 89-94 (1987) admonishes at page 93: Const. Art 4, § 31 (amend. 71) and RCW 2.64.110 indicate that confidentiality is the norm. RCW 2.64.110 expressly provides for contempt of court proceedings against those who leak or disclose confidential information. Indeed, statements by any person on the Commission or in its employ to the news media or to any other person not in the employ of the Commission concerning a matter under investigation and violative of the statute would not only be contempt of court but a breach of duty as an employee or member of the Commission.

⁷ Thus, a complainant could also relate the substance of a complaint to a law enforcement official.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Order 96-001, filed 8/13/96)

RULE 16. NOTIFICATION (TO COMPLAINANT) OF FINAL DISPOSITION

The commission shall notify the complainant in writing of the final disposition of a proceeding under these rules. The

commission in its sole discretion may also notify another agency or person who was contacted during an investigation or initial proceeding about the disposition of a proceeding.

Comment:

Modifications proposed to Rule 16 allow the Commission to notify others about the disposition of a proceeding where warranted.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Order 96-001, filed 8/13/96)

RULE 17. SCREENING AND INVESTIGATION

(a) General. An investigative officer employed by the commission will conduct the investigation aided by disciplinary counsel if deemed appropriate by the commission.

(b) Screening.

(1) Any named or anonymous organization, association, or person, including a member of the commission or staff, may make a complaint of judicial misconduct or incapacity to the commission. A complaint may be made orally or in writing.

(2) The investigative officer shall evaluate all complaints to determine whether:

(A) The person against whom the allegations are made is a judge subject to the disciplinary authority of the commission; and either

(B) The facts alleged, if true, would constitute misconduct or incapacity; or

(C) The investigative officer has grounds to believe that upon further inquiry such facts might be discovered. If not, the investigative officer shall recommend to the commission to dismiss the matter or, if appropriate, refer the complainant to another agency.

(c) ~~With the approval of the commission, the investigative officer may notify respondent that a complaint has been received and may disclose the name of the individual making the complaint.~~

(d) Preliminary investigation.

(1) Upon receipt of a complaint, the investigative officer shall make a prompt, discreet, preliminary investigation and evaluation. Failure of a person making the complaint to supply requested additional information may result in dismissal of that complaint. The investigative officer may interview witnesses and examine evidence to determine whether grounds exist to believe the allegations of complaints. No subpoena shall be issued to obtain testimony or evidence until authorized by a member of the commission. The investigative officer will assemble documentary evidence, declarations, sworn statements, and affidavits of witnesses for consideration by the commission. The investigative officer shall recommend to the commission that it authorize a full investigation when there is evidence supporting the allegations against a respondent. The investigative officer may recommend a full investigation when there are grounds to believe that evidence supporting the allegations could be obtained by subpoena or further investigation. Where there

are no such grounds, the matter shall be dismissed. Where there is a basis to proceed, the commission will forward those supporting records into the initial proceedings.

(2) If the complaint alleges that a respondent is suffering a possible physical and/or mental incapacity which may seriously impair the performance of judicial duties, or is exhibiting conduct which may be the result of such incapacity, the commission may order a respondent to submit to physical and/or mental examinations conducted at commission expense by a practitioner or health care provider selected by the commission. The failure or refusal of a respondent to submit to physical and/or mental examinations ordered by the commission may, in the discretion of the commission, preclude respondent from presenting the results of other physical and/or mental examinations on his or her behalf.

(3) Upon determination of the commission to commence initial proceedings, it shall direct the investigative officer to file a statement of allegations setting forth the nature of the complaint with sufficient specificity to permit a response.

((e)) d) Initial proceedings.

(1) The respondent who is the subject of initial proceedings will be provided with a copy of the statement of allegations and shall be given a reasonable opportunity to respond.

(2) Within twenty-one days after the service of the notice to respondent, respondent may file a written response with the investigative officer. The proceedings will not be delayed if there is no response or an insufficient response.

(3) If the commission determines that probable cause exists that respondent has violated a rule of judicial conduct or may be suffering from an incapacity, it shall order the filing of a statement of charges.

(4) Disposition after initial proceedings. The commission shall:

(A) Dismiss the case;

(B) Stay the proceedings; or

(C) Find that probable cause exists that respondent has violated a rule of judicial conduct or may be suffering from an incapacity that seriously interferes with the performance of judicial duties and is permanent or likely to become permanent. Upon such a finding of probable cause, the commission shall identify the records of the initial proceedings that are the basis for the finding and order the service and filing of a statement of charges. The commission shall also identify those materials and information within the commission's knowledge which tend to negate the determination of the commission.

(5) If the commission determines that there are insufficient grounds for further commission proceedings, the respondent and the person making the complaint will be so notified.

(e) Notice of complaint to respondent. With the approval of the commission, the investigative officer may notify respondent that a complaint has been received and may disclose the name of the person making the complaint. Disclosure shall be discretionary with the commission.

Comment:

Rule 17(c) is moved to the end of the section as the proposed new Rule 17(e). The discretionary nature of the disclosure is stated. Renumbered proposed Rule 17 (d)(4)(C) restates part of what RCW 2.64.096 provides.

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Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Order 96-001, filed 8/13/96)

RULE 22. DISCLOSURE AND DISCOVERY

(a) Disclosure.

(1) **Required disclosure.** Within fourteen days after the filing of the answer, disciplinary counsel shall disclose to respondent or respondent's lawyer the records identified by the commission pursuant to Rule 17 ((e))d(4)(C), unless otherwise provided by commission protective order.

(2) Upon written demand after the time for filing an answer has expired, the commission and respondent will each disclose within fourteen days thereof, or such additional time as the commission may allow, with a continuing obligation of disclosure thereafter, the following:

(A) Names and addresses of all witnesses whose testimony that party expects to offer at the hearing;

(B) A brief summary of the expected testimony of each witness;

(C) Copies of signed or electronically or stenographically recorded statements of anticipated witnesses; and

(D) Copies of documentary evidence which may be offered.

(3) Witnesses or documentary evidence not disclosed may be excluded from evidence.

(b) Discovery following statement of charges.

(1) The taking of depositions, the requests for admissions, and all other discovery procedures authorized by Rules 26 through 37 of the Superior Court Civil Rules are available only upon stipulation or prior permission of the presiding officer upon a showing of good cause.

(2) Absent good cause, all discovery shall be completed within sixty days of the filing of the answer.

(3) Disputes concerning discovery shall be determined by the commission or presiding officer before whom the matter is pending. These decisions of the commission may not be appealed before the entry of the final order.

Comment:

The proposed change to Rule 22 (a)(1) states the remaining part of what RCW 2.64.096 provides. See proposed Rule 17 (d)(4)(C).

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Order 96-001, filed 8/13/96)

RULE 23. STIPULATIONS

(a) Submission ((Approval)). At any time prior to the final disposition of a proceeding, respondent may stipulate to any or all of the allegations or charges in exchange for a stated discipline. The stipulation shall set forth all material facts relating to the proceeding and the conduct of respondent. The stipulation may impose any terms and conditions deemed appropriate by the commission, and shall be signed by respondent and disciplinary counsel. The agreement shall

be submitted to the commission, which shall either approve or reject the agreement. If the stipulation is rejected by the commission, the stipulation shall be deemed withdrawn and cannot be used by or against respondent in any proceedings.

(b) Entry of Order ((of discipline)). If the commission accepts the agreement, it shall enter an ((the)) order ((disciplining respondent)) in ((an)) open session.

Comment:

Rule 23 is proposed to be modified to include the entire stipulation process.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Order 96-001, filed 8/13/96)

RULE 24. HEARING

(a) Scheduling. Upon receipt of respondent's answer or upon expiration of the time to answer, the commission shall schedule a public hearing and notify disciplinary counsel and respondent of the date, time, and place of the hearing. Respondent will be provided at least fourteen days notice of hearing, which will also include the name or names of the commission members and the presiding officer, if any.

(b) Conduct of hearing.

(1) All testimony shall be under oath.

(2) Disciplinary counsel shall present the case in support of the statement of charges.

(3) Disciplinary counsel may call respondent as a witness.

(4) Both parties shall be permitted to present evidence and produce and cross-examine witnesses.

(5) The hearing shall be recorded verbatim. Whenever a transcript is requested by respondent, disciplinary counsel, or a member of the commission, a transcript of the hearing shall be produced at the requesting party's expense.

~~(6) ((Respondent's compliance with an opinion by the ethics advisory committee shall be considered by the commission as evidence of good faith.~~

~~(7) ((8)))~~ Counsel may recommend and argue for a discipline appropriate to the misconduct supported by the evidence, including argument on aggravating and mitigating factors.

~~(7) ((8)))~~ Disciplinary counsel and respondent may submit their respective proposed findings, conclusions, and recommendations for discipline or order of dismissal to the commission.

~~(8) ((9)))~~ Where a member of the commission has not heard the evidence, that member shall not participate in any deliberations or decisions until he or she personally considers the whole record, or portion of the hearing from which that member was absent.

~~(9) ((10)))~~ At least six members, or their alternates, must continually be present during presentation of testimony at the hearing.

(c) Dismissal or recommendation for discipline. The commission shall dismiss the case, discipline respondent, or in the case of incapacity, recommend to the supreme court the retirement of respondent.

(d) Submission of the report. After the hearing, the commission shall file the record of the proceeding and a decision setting forth written findings of fact, conclusions of law, any minority opinions, and the order, within ninety days following the evidentiary hearing or after the filing of the transcript if one is requested, unless the presiding officer extends the time. The decision shall be announced in open session. If personal attendance is required, respondent shall have at least fourteen days notice of the announcement, unless otherwise agreed. A copy of the decision shall be served upon respondent.

(e) Motion for reconsideration. The commission decision is final fourteen days after service unless a motion for reconsideration is filed by respondent or disciplinary counsel. A motion for reconsideration, if filed, shall be specific and detailed, with appropriate citations to the record and legal authority. Any response to the motion must be filed within fourteen days after service. The motion will be decided without oral argument unless requested by the commission. If the motion for reconsideration is denied, the decision is final when the order denying the motion is filed. If the motion for reconsideration is granted, the reconsidered decision is final when filed in the commission's office.

Comment:

Rule 24 (b)(6) is moved to proposed Rule 16 (c)(12) where it is logically consistent. Rule 24(d) is proposed to be modified to expressly state the requirements in the statutes and constitution in a logical progression of events that the Commission's decision be announced in an open session. The proposed rule also provides how much notice a respondent must receive to attend the announcement if attendance is required. Proposed Rule 24(e) clarifies that either party may move to reconsider a Commission's decision. A response to a motion is authorized within 14 days after service.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

RULE 29 COMPLIANCE PROCEEDINGS

(a) Whenever the commission enters an order of discipline which includes terms and conditions that prescribes behavior for, or requires a corrective course of action by, the respondent, the investigative officer shall investigate, evaluate and report on compliance with the order. If the commission has reason to believe that further disciplinary action is appropriate, the commission shall conduct an initial proceeding. The investigation and initial proceeding shall be conducted as provided in Rule 17 and shall be confidential. Compliance proceedings shall be conducted in accordance with the procedures for disciplinary proceedings under these rules, except as provided in subsection (b).

(b) Upon application and submission of sufficient information by respondent, the commission may find that respondent has complied with or satisfied the terms and conditions of a disciplinary order. The commission may concur with the application, dispense with further compliance proceedings and enter an order certifying respondent's compliance with the disciplinary order and shall make public the application

and information upon which it based its conclusions, except as otherwise provided by protective order.

Comment:

Proposed Rule 29 provides for post-decision proceedings.

WSR 99-09-078

PROPOSED RULES

FOREST PRACTICES BOARD

[Filed April 20, 1999, 8:53 a.m.]

Continuance of WSR 98-21-015.

Preproposal statement of inquiry was filed as WSR 98-16-099.

Title of Rule: Amendments to forest practices rules, Title 222 WAC.

Purpose: Current forest practices rules are not providing adequate protection for salmon and other public resources. The Forest Practices Board and the Department of Natural Resources face many new resource protection challenges, the most significant of which are the current and proposed listings of salmonids under the federal Endangered Species Act (ESA) and water quality-limited waters under the federal Clean Water Act (CWA).

At its September 22, 1998, [meeting] the Forest Practices Board approved the following goals for this rule package:

1. To provide compliance with the Endangered Species Act for aquatic and riparian-dependent species;
2. To restore and maintain riparian habitat on state and private forest lands to support a harvestable supply of fish;
3. To meet the requirements of the Clean Water Act for water quality on state and private forest lands; and
4. To keep the timber industry economically viable in Washington.

The Forest Practices Board is conducting rule making on a comprehensive package of new and revised rules. Timber, Fish and Wildlife (TFW) participants have been negotiating some of the issues covered by this proposal, but have not yet reached consensus. Should a consensus be reached during this rule-making process, the proposal may be modified to include their recommendation as an alternative.

Statutory Authority for Adoption: Chapter 35.05 [34.05] RCW, RCW 76.09.040, [76.09.]050.

Statute Being Implemented: Chapter 76.09 RCW.

Summary: Modify forest practices rules (Title 222 WAC) to incorporate new public resource protection requirements. Categories of rules include riparian protection for fish-bearing and nonfish-bearing streams; water typing; wetlands; Class IV-Special; SEPA guidance; application procedures; roads; slope stability; forest chemicals; enforcement; monitoring; adaptive management; and watershed analysis.

Citation of existing rules amended by this order: WAC 222-08-035 Continuing review of forest practices rules, 222-12-045 Adaptive management, 222-12-090 Forest practices board manual, 222-16-010 General definitions, 222-16-030 Water typing system, 222-16-050 Classes of forest practices, 222-20-010 Applications and notifications—Policy, 222-20-020 Application time limits, 222-20-070 Emergency forest

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practices plan, 222-22-010 Policy-watershed analysis, 222-22-030 Qualification of analysts, 222-22-040 Watershed prioritization, 222-22-050 Level 1 watershed assessment, 222-22-060 Level 2 watershed assessment, 222-22-070 Prescription recommendation, 222-22-090 Use and review, 222-24-010 Policy-road construction, 222-24-020 Road location and design, 222-24-030 Road construction, 222-24-035 Landing location and construction, 222-24-040 Water crossing structures, 222-24-050 Road maintenance, 222-24-060 Rock quarries, etc., 222-30-010 Policy-timber harvesting, 222-30-020 Harvest unit planning and design, 222-30-070 Tractor and wheeled skidding systems, 222-38-020 Handling, storage, and aerial application of pesticides, 222-38-030 Handling, storage, and aerial application of fertilizers, 222-46-060 Civil penalties, and 222-46-065 Base penalty schedule.

New sections added: WAC 222-10-020 SEPA policies for certain forest practices within 200 feet of a Type S water, 222-10-030 Class IV-Special construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas or timber harvest on unstable landforms or slide prone areas SEPA policies, 222-12-044 Cooperative opportunities, 222-20-015 Multi-year permits, 222-22-035 Watershed screening, 222-22-065 Review of assessments, 222-22-075 Monitoring, 222-22-076 Restoration, and 222-46-055 Compensation for resource damages.

See rule text for sections marked * indicating coadoption by the Department of Ecology.

Reasons Supporting Proposal: Modifications to rules are needed to better protect Washington's public resources. See Purpose above.

Name of Agency Personnel Responsible for Drafting: Judith Holter, 1111 Washington Street S.E., Olympia, WA 98504-7012, (360) 902-1412; Implementation and Enforcement: Catherine Elliott, 1111 Washington Street S.E., Olympia, WA 98504-7012, (360) 902-1041.

Name of Proponent: Forest Practices Board, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed rule:

- Revises the water typing system used to identify fish-bearing and nonfish-bearing streams so that

Proposal Changes the Following Existing Rules:

Rule Category	WAC 222	Current Rules - No Change Alternative	Initial Draft Alternative - Summary of Additions and Revisions
Adaptive Management	08-035, 12-044, 12-045		Expands adaptive management by spelling out CMER's reporting responsibilities and its relationship to the board. Adds a new section on cooperative opportunities.
FPB Manual	12-090		Adds guidelines for roads, aerial applications of pesticides, channel disturbance zones.
Definitions	16-010		Adds thirty-six definitions: Twenty-four for unstable slopes; others for roads, RMZ, pesticides.
Water Typing	16-030	Types 1 through 5 waters	New water typing system provides three categories: S=shorelines; F=fish-habitat waters; N=nonfish-habitat waters; fish habitat is defined.

more adequate protection is provided for fish habitat.

- Provides a five-year forest practices permit for land-owners who have completed watershed analysis or who have submitted an application for a road maintenance and abandonment plan that will take longer than two years to implement.
- Adds shorelines of the state to the Class IV-Special list and gives SEPA guidance for the applicant to follow.
- Expands the Class IV-Special SEPA trigger for unstable slopes, gives SEPA guidance, and adds twenty-four definitions related to unstable slopes.
- Revises riparian management zone requirements for eastern and western Washington, and includes options for possible buffer widths.
- Presents options for variable buffer widths for aerial application of pesticides and adds best management practices to the Forest Practices Board manual.
- Adds best management practices related to roads to the FPB manual; revises requirements for road location and design, relief drainage structures, water crossing structures, and road maintenance and abandonment.
- Makes watershed analysis a more public process; allows DNR to write the prescriptions if the prescription team does not reach consensus; requires a prescription monitoring plan.
- Enables DNR to develop a schedule of penalties for compensation of resource damages where there has been material damage to public resources; adds a base penalty of \$10,000 for operating without an approved forest practices permit.
- Expands adaptive management requirements by formally establishing the cooperative monitoring, evaluation, and research (CMER) committee of TFW and charging them with implementing adaptive management based on scientific findings; encourages cooperative opportunities for working with the board.

The anticipated effects for these rules include improved water quality and fish habitat, as well as better overall protection of public resources while maintaining a viable forest products industry.

Rule Category	WAC 222	Current Rules - No Change Alternative	Initial Draft Alternative - Summary of Additions and Revisions
Class IV-Special & SEPA Guidance	16-050, 10-020, 10-030	9 categories listed for Class IV-Special designation	Adds certain fp operations w/in two hundred feet of a Type S water to the IV-Special list; changes how roads and harvesting on unstable slopes are triggered - focuses on high and moderate hazard areas; new SEPA guidance sections written for shorelines and unstable slopes.
Applications: Multi-year Permits	20-015, 20-020, 20-010, 20-070	Permits are valid for two years	Five year permit option for landowners within a completed watershed analysis; multi-year permit provided for road maintenance and abandonment plans. Name of operator and notice to the department required to begin forest practices operations. Plan for emergency forest practices required with road maintenance plan.
Watershed Analysis	22-010 to 22-076	Process and requirements for watershed analysis are prescribed	New sections for watershed screening (WAC 222-22-035), review of assessments (WAC 222-22-065), monitoring (WAC 222-22-075) and restoration (WAC 222-22-076). Revisions include making watershed analysis a public process; authorizing the department to write prescriptions if the prescription team takes longer than the thirty days provided; adds a cross reference to multi-year permits.
Roads	24-010 to 24-060	Road plans required upon dept. request	Adds mandatory road maintenance and abandonment plan requirements; revises road design and water crossing sections; adapts road information to new water typing system; provides HPA requirements for nonfish-habitat waters; outcome-based standards clarified. No roads are allowed through bogs and wetlands policy in relation to roads is clarified: No net loss of wetland functions and mitigation sequence is given; BMPs to be written for FPB manual.
Riparian Management Zones	30-010, 30-020, 30-070	W. Wash: 25' to 100' E. Wash: 30'-300' + leave tree requirements	Revises riparian management zone requirements (RMZs) on fish-habitat waters: W. Wash: 100' no-harvest; SPTH 10-40 trees/acre; management w/in 100' alternate plan E. Wash: 100' no-harvest buffer/SPTH; management w/in 100' for fire, disease as altern. plan Revises RMZs on nonfish-habitat waters that are perennial: <u>Option 1</u> - 500' no harvest OR: <u>Option 2</u> - above fish-habitat type 2/3 SPTH on perennial Ns changes sensitive sites provisions 1/2 SPTH on seasonal Ns 50% shade — stream length 30' equipment limitation zone everywhere else, including seasonal streams
Pesticides	38-020 38-030	50' buffers	Three buffer options provided for aerial application of pesticides: Two hundred fifty feet; fifty to three hundred twenty-five feet, fifty feet for Type N; technical details to be placed in FPB manual.
Enforcement	46-055, 46-060, 46-065		Increases civil penalty for operating without permit; adds compensation requirement for resource damage assessment; eliminates one step of remission/mitigation for civil penalties.

PROPOSED

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

The small business economic impact statement was filed with the original notice on October 12, 1999[1998], and published in issue 98-23.

A copy of the statement may be obtained by writing to Forest Practices Board Recording Secretary, Department of Natural Resources, Forest Practices Division, P.O. Box 47012, Olympia, WA 90504[98504]-7012, phone (360) 902-1413, fax (360) 902-1789, e-mail forest.practicesboard@wadnr.gov.

Section 201, chapter 403, Laws of 1995, applies to this rule adoption. Some of the sections proposed are significant legislative rules.

Hearing Location: Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA, on November 9, 1999, at 3:00 p.m.

Assistance for Persons with Disabilities: Contact Forest Practices Board Secretary, (360) 902-1413, by November 1, 1999, TTY (360) 902-1125.

Submit Written Comments to: Judith Holter, Department of Natural Resources, Forest Practices Division, fax (360) 902-1789, by November 9, 1999.

Date of Intended Adoption: November 10, 1999.

March 31, 1999

Jennifer M. Belcher
Commissioner of Public Lands

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-08-035 Continuing review of forest practices ((regulations)) rules. *(1) Annual evaluations. The department, after consulting with affected state agencies, Indian tribes, forest landowners, fish and wildlife, natural resources, and environmental interest groups, shall beginning July 1, 1988, report annually to the forest practices board an assessment of how ((regulations)) the rules and voluntary processes are working.

(2) Adaptive management. CMER will report results to the TFW Policy Group within six months of completion of a project. If CMER does not contain a consensus report, then the majority and minority thinking should be forwarded to TFW. TFW will report the project results to the board within six months of CMERs report. TFW will use CMERs work to make recommendations amending: the statutory scheme of forest practices management; the regulatory scheme of forest practices management; voluntary, incentive-based, and training programs affecting forestry; resource objectives; and CMER, adaptive management procedures, or other mechanisms for implementing forest practices. TFW recommendations to the board will be accompanied by formal petitions for rule making (RCW 34.05.330), if appropriate. If TFW cannot reach agreement, then mediation may be used. If mediation is not successful within three months, then the forest practices board will hear the alternatives and recommendations and make a decision. In addition, ((The)) the department is directed to report to the board on opportunities to

modify these ((regulations)) rules when baseline data, monitoring, evaluation or the use of interdisciplinary teams show that such adaptive management will better meet the purposes and policies of the Forest Practices Act.

(3) Resource management plans. The department is directed to develop a method for cooperative voluntary resource management planning among forest landowners, governmental agencies, affected Indian tribes, and environmental groups which would result in the development of plans which might be used as an alternative to the forest practice regulations in achieving the purposes and policies set forth in the act. This should be done through pilot projects, at least one of which should be located on the east side of the Cascade summit and one on the west side of the Cascade summit.

NEW SECTION

WAC 222-10-020 *SEPA policies for certain forest practices within 200 feet of a Type S water. The following policies shall apply to Class IV-Special forest practices, involving construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas within 200 feet of Type S waters.

*(1) In order to determine whether forest practices are likely to have a probable significant adverse impact, and therefore require an environmental impact statement, the applicant must submit to the department additional information prepared by a qualified expert on: Whether the proposed activity is within the channel migration zone of the Type S water; whether the proposed activity has the potential for accelerating erosional and depositional processes of the Type S water; whether the proposal will have an impact on salmonid spawning, rearing, or migration habitat; and whether the proposal will adversely impact a threatened or endangered species. (See WAC 222-10-043.) In addition, the report must identify specific mitigation measures designed to reduce the impacts to avoid any probable significant adverse impacts identified above.

*(2) The department will evaluate the proposal in consultation with the department of ecology, the department of fish and wildlife, local government, and affected Indian tribes. If the proposal is likely to cause significant adverse impacts to salmonid spawning, rearing, or migration habitat, accelerate erosional and depositional processes of the Type S water, or cause significant adverse impacts to a threatened or endangered species, then it is likely to have a probable significant adverse impact on the environment. If the department determines, in consultation with the department of fish and wildlife, that the proposal will appropriately mitigate the impacts, then the mitigated proposal is not likely to have a probable significant adverse impact on the environment.

*(3) If a local permit is required, then the local government is lead agency and the department shall forward the additional information, the environmental checklist, and the forest practices application to the local government for completing SEPA. (See WAC 222-20-040(4).)

NEW SECTION

WAC 222-10-030 Class IV-Special construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas or timber harvest on unstable landforms or slide prone areas SEPA policies. In addition to the SEPA policies established elsewhere in this chapter, the following policies shall apply to Class IV-Special forest practices involving construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas, or timber harvest, on unstable landforms or other slide-prone areas.

(1) In order to determine whether forest practices are likely to have a probable significant adverse impact, and therefore require an environmental impact statement, the applicant must submit additional information to the department, including a report by a qualified expert, regarding: whether the site contains or is affected by unstable landforms, such as but not limited to inner gorges, deep-seated landslides, bedrock hollows, convergent headwalls, or other weak geologic formations or structures; whether such landforms have the potential to undergo mass movement; if mass movement occurs, whether water, sediment, and/or debris could be delivered to public resources or threaten public safety; and, whether the likelihood of movement would be increased as a result of the proposed forest practice activity. In addition the report must identify specific mitigation measures that are proposed to reduce any probable significant adverse impacts identified above.

(2) The department shall evaluate the proposal, using appropriate expertise, to determine whether the proposed forest practices reasonably would be expected, directly or indirectly, to increase the likelihood of a slope to undergo mass movement; and to deliver debris, sediment and/or water to a public resource or threaten public safety. If such is the case, then the proposed forest practices are assumed to have a probable significant adverse impact on the environment.

NEW SECTION

WAC 222-12-044 Cooperative opportunities. The forest practices board recognizes and encourages cooperative opportunities to work to build solutions associated with forest practices. The forest practices board can at any time use this method to assist in assessing and recommending solutions to issues. The board recognizes the Timber, Fish, and Wildlife cooperative as one ongoing cooperative group that represents disparate interests while working towards consensus recommendations, where possible, to forest practices issues. TFW membership is self-selecting and should be made of at least three policy members each from the following caucuses: Forest landowners (industrial and family-owned); environmental community; tribal governments; county governments with forest lands; state agencies (departments of fish and wildlife, ecology and natural resources); federal government (National Marine Fisheries Service, US Fish and Wildlife Service, Environmental Protection Agency and US Forest Service). TFW members will serve without compensation or per diem. TFW will assist the forest practices board in: Establishing resource objectives; selecting the administrator

of CMER; determining CMERs program priorities and specific projects; defining research objectives; making recommendations to the forest practices board based on results of CMER projects or other issues the board has requested assistance of TFW; assisting in dispute resolution where CMER cannot come to consensus; and serving as requested by the board in other roles.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 87-23-036, filed 11/16/87, effective 1/1/88)

WAC 222-12-045 *Adaptive management. In order to further the purposes of chapter 76.09 RCW the board has adopted a policy of adaptive management designed to modify these ((regulations)) rules and their application based on cooperative research, monitoring, and evaluation. This policy will be implemented by establishing the Cooperative, Monitoring, Evaluation and Research committee. The committee will emphasize validation and effectiveness monitoring and research. The committee will use accepted scientific principles for performing their work, such as: Identifying testable hypotheses, utilizing established resource objectives, identifying the affected public resource and the cause and effect relationship with forest practices, data gathering analysis, and evaluation of resource and operational impacts. Each funded project will have an independent scientific peer review conducted. The committee will be made up of members of each TFW caucus that have expertise in the interaction of forest practices with public resources. CMER members will serve voluntarily without compensation or per diem. The department will employ an administrator to oversee the committee. The administrator will be selected in consultation with caucus representatives of the Timber, Fish, and Wildlife cooperative. The administrator will be responsible for managing the research and monitoring, including budget preparation and work plans with set time frames for products, and resolving disputes within the committee. In addition, the administrator will select peer reviewers in consultation with TFW. The administrator will report to the forest practices board annually the membership of the CMER. The administrator will present to the forest practices board biennially a budget proposal, projects list and time frames for work to be accomplished for approval. The proposal will have been developed in consultation with TFW. This will be the basis for CMERs biennial request to the legislature. The administrator will be responsible for annual progress reports to the forest practices board on the funded projects. The department will conduct a performance audit of the expenditure of legislatively appropriated funds biennially. Such adaptive management shall include the measures set out in WAC 222-08-035.

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-12-090 Forest practices board manual. When approved by the board the manual serves as an advisory technical supplement to these forest practices regula-

tions. The department, in cooperation with the departments of fish and wildlife, agriculture, ecology, and such other agencies, affected Indian tribes, or interested parties as may have appropriate expertise, is directed to prepare, and submit to the board for approval, revisions to the forest practices board manual. The manual shall include:

(1) **Method for determination of adequate shade requirements on streams** needed for use with WAC 222-30-040.

(2) **The standard methods** for measuring channel width, stream gradient and flow which are used in the water typing criteria WAC 222-16-030.

(3) **A chart for** establishing recommended permanent culvert sizes and associated data.

(4) **Guidelines** for clearing slash and debris from Type 4 and 5 Waters.

(5) **Guidelines** for landing location and construction.

(6) **Guidelines** for determining acceptable stocking levels.

(7) **Guidelines** for calculating average widths of riparian management zones.

(8) **Guidelines** for wetland delineation.

(9) **Guidelines** for wetland replacement or substitution.

(10) A list of nonnative wetland plant species.

(11) The standard methodology, which shall specify the quantitative methods, indices of resource conditions, and definitions, for conducting watershed analysis under chapter 222-22 WAC. The department, in consultation with Timber/Fish/Wildlife's Cooperative Monitoring, Evaluation and Research Committee (CMER), may make minor modifications to the version of the standard methodology approved by the board. Substantial amendments to the standard methodology requires approval by the board.

(12) A list of special concerns related to aerial application of pesticides developed under WAC 222-16-070(3).

(13)

(14) **Survey protocol for marbled murrelets.** The Pacific seabird survey protocol in effect March 1, 1997, shall be used when surveying for marbled murrelets in a stand. Surveys conducted before the effective date of this rule are valid if they were conducted in substantial compliance with generally accepted survey protocols in effect at the beginning of the season in which they were conducted.

(15) The department shall, in consultation with the department of fish and wildlife, develop **platform protocols** for use by applicants in estimating the number of platforms, and by the department in reviewing and classifying forest practices under WAC 222-16-050. These protocols shall include:

(a) A sampling method to determine platforms per acre in the field;

(b) A method to predict the number of platforms per acre based on information measurable from typical forest inventories. The method shall be derived from regression models or other accepted statistical methodology, and incorporate the best available data; and

(c) Other methods determined to be reliable by the department, in consultation with the department of fish and wildlife.

***(16) Requirements for application of pesticides, aerial application equipment and operating parameters, and favorable weather conditions for aerial application of pesticides.**

***(17) Delivery of sediment and debris, and lengths of channel disturbance zones.**

AMENDATORY SECTION (Amending WSR 98-07-047, filed 3/13/98, effective 5/1/98)

WAC 222-16-010 General definitions.* Unless otherwise required by context, as used in these regulations:

"Act" means the Forest Practices Act, chapter 76.09 RCW.

"Affected Indian tribe" means any federally recognized Indian tribe that requests in writing from the department information on forest practices applications and notification filed on specified areas.

"Appeals board" means the forest practices appeals board established in the act.

"Area of resource sensitivity" means areas identified in accordance with WAC 222-22-050 (2)(d) or 222-22-060(2).

"**Bankfull level**" (bankfull stage) means the elevation of the top of the active geomorphic floodplain of a stream. It is the area inundated by a flow having a return period of approximately 1.5 years in the annual flood series, which is considered the effective channel-forming discharge. Bankfull level is indicated by the top of the point bar; by a change in vegetation, from bare surfaces or water-tolerant species to water-intolerant shrubs and trees; by a break in slope; or by a change in the size distribution of surface sediments.

"**Bankfull depth**" means the elevation difference between the lowest point of a riffle and the bankfull level in a stream reach.

"**Bankfull width**" means the average distance between the lines defining the bankfull depth in a stream reach.

"**Bedrock hollows**" ("colluvium-filled bedrock hollows" or "hollows"; also referred to as zero-order basins, swales, or bedrock depressions) are commonly spoon-shaped areas of convergent topography (upward or contour concavity) within unchannelled valleys on hillslopes. Hollows are formed on slopes of varying steepness, and tend to be longitudinally linear on the slope. Their upper ends can extend to the ridge, or begin as much as several hundred feet below. Most hollows are approximately 75 to 200 feet wide at the top, and may narrow to 30 to 60 feet downhill. They terminate at distinct channels, either at the usual point of channel initiation or along a stream side. Unless they have recently experienced scouring by landslide or debris flow, bedrock hollows are partially or completely filled with colluvial soils that are typically deeper than those on the adjacent spurs and planar slopes. (Note: Hollows that are completely filled with colluvium may show no surface concavity.) Many hollows have no surface water, but others contain seeps and springs. Hollows should not be confused with other hillslope concavities such as small valleys, the bodies of large landslides, tree-thrown holes, or low-gradient grassy swales. Bedrock hollows typically experience episodic evacuation of debris by shallow-rapid mass movement, followed by slow refilling with

colluvium. Debris slides that begin within bedrock hollows commonly evolve into debris torrents, which have the potential to reach great distances downhill and downstream.

"Board" means the forest practices board established by the act.

"Bog" means wetlands which have the following characteristics: Hydric organic soils (peat and/or muck) typically 16 inches or more in depth (except over bedrock or hardpan); and vegetation such as sphagnum moss, labrador tea, bog laurel, bog rosemary, sundews, and sedges; bogs may have an overstory of spruce, western Hemlock, lodgepole pine, cedar, whitepine, crabapple, or aspen, and may be associated with open water. This includes nutrient-poor fens. See the *Forest Practices Board Manual*.

"Borrow pit" shall mean an excavation site outside the limits of construction to provide material necessary to that construction, such as fill material for the embankments.

"Channel disturbance zone (CDZ)" means the area that might be affected by landslides or debris torrents originating on hillslopes that are identified as actively or potentially unstable. The longitudinal extent of a CDZ is estimated as:

- For existing or potential stream-adjacent landslides, the CMZ includes the stream reach(es) bordering the slide body;
- For existing or potential upslope landslides, from which delivery of sediment or debris is likely, the stream reach(es) directly downhill from the slide area;
- For landslides that could reasonably be transformed into debris torrents (debris flows or dam-break floods), the downstream extent of the CDZ shall be estimated based on topographic, hydraulic, and vegetational characteristics of the channel, based on accepted methods as described in the *Forest Practices Board Manual*.

In all cases, CDZs shall include the entire width of the channel migration zone, unless local information and analysis indicates that not all of the CMZ could reasonably be affected.

"Channel migration zone (CMZ)" means the area that a stream has occupied, or could be expected to occupy, within the time it would take to grow trees of sufficient size to function geomorphically within the channel. Migration may be caused by meandering, braiding, or avulsion. In a given stream reach, the CMZ should be delineated as the widest zone including the following:

- Areas of recently-occupied channels, as indicated by channel-bed topography, coarser surface sediments with thin soils, and/or younger vegetation;
- The 100-year floodplain, as shown on flood insurance rate maps, or as estimated from hydraulic modeling;
- The 100-year floodplain, estimated as the area that would be inundated by flows twice the bankfull depth;
- An area, centered on the current channel, that is twice the bankfull width.

"Chemicals" means substances applied to forest lands or timber including pesticides, fertilizers, and other forest chemicals.

"Clearcut" means a harvest method in which the entire stand of trees is removed in one timber harvesting operation. Except as provided in WAC 222-30-110, an area remains clearcut until:

It meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2); and

The largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"Colluvium-filled bedrock hollows": See bedrock hollows.

"Columbia River Gorge National Scenic Area or CRGNSA" means the area established pursuant to the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §544b(a).

"CRGNSA special management area" means the areas designated in the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §544b(b) or revised pursuant to 16 U.S.C. §544b(c). For purposes of this rule, the special management area shall not include any parcels excluded by 16 U.S.C. §544f(o).

"CRGNSA special management area guidelines" means the guidelines and land use designations for forest practices developed pursuant to 16 U.S.C. §544f contained in the CRGNSA management plan developed pursuant to 15 U.S.C. §544d.

"Commercial tree species" means any species which is capable of producing a merchantable stand of timber on the particular site, or which is being grown as part of a Christmas tree or ornamental tree-growing operation.

"Completion of harvest" means the latest of:

Completion of removal of timber from the portions of forest lands harvested in the smallest logical unit that will not be disturbed by continued logging or an approved slash disposal plan for adjacent areas; or

Scheduled completion of any slash disposal operations where the department and the applicant agree within 6 months of completion of yarding that slash disposal is necessary or desirable to facilitate reforestation and agree to a time schedule for such slash disposal; or

Scheduled completion of any site preparation or rehabilitation of adjoining lands approved at the time of approval of the application or receipt of a notification: *Provided*, That delay of reforestation under this paragraph is permitted only to the extent reforestation would prevent or unreasonably hinder such site preparation or rehabilitation of adjoining lands.

"Constructed wetlands" means those wetlands voluntarily developed by the landowner. Constructed wetlands do not include wetlands created, restored, or enhanced as part of a mitigation procedure or wetlands inadvertently created as a result of current or past practices including, but not limited to: Road construction, landing construction, railroad construction, or surface mining.

"Contamination" means the introducing into the atmosphere, soil, or water, sufficient quantities of substances as

PROPOSED

may be injurious to public health, safety or welfare, or to domestic, commercial, industrial, agriculture or recreational uses, or to livestock, wildlife, fish or other aquatic life.

Convergent headwalls ("headwalls") are teardrop-shaped landforms, broad at the ridgeline and terminating where headwater channels have converged into a single channel. They are broadly concave both longitudinally and across the slope, but may contain sharp ridges that separate the headwater channels. Convergent headwalls generally range in size from about 30 to 300 acres; slope gradients are typically steeper than 35°, and may locally exceed 45°. Soils are thin because slides are frequent in these landforms. It is the arrangement of bedrock hollows and first-order channels on the landscape that causes a convergent headwall to be a unique mass-wasting feature. The highly convergent shape of the slopes, coupled with thin soils, allows rapid saturation during rainfall and/or snowmelt. The mass-wasting response of these areas to storms, natural disturbances such as fire, and to forest practices is much greater than is observed on other steep hillslopes in the same geologic settings. Convergent headwalls are also prone to surface erosion. Landslides that evolve into debris flows in convergent headwalls typically deliver debris to larger channels downstream. Channel gradients are extremely steep within headwalls, and generally remain so for long distances downstream. Channels that exit the bottoms of headwalls have been formed by repeated debris flows, and have forms and gradients that are efficient at conducting them. Convergent headwalls commonly have debris fans at the slope bases.

"Conversion option harvest plan" means a voluntary plan developed by the landowner and approved by the local government entity indicating the limits of harvest areas, road locations, and open space.

"Conversion to a use other than commercial timber operation" shall mean a bona fide conversion to an active use which is incompatible with timber growing.

"Cooperative habitat enhancement agreement (CHEA)" see WAC 222-16-105.

"Critical habitat (federal)" means the habitat of any threatened or endangered species designated as critical habitat by the United States Secretary of the Interior or the United States Secretary of Commerce under Sections 3 (5)(A) and 4 (a)(3) of the Federal Endangered Species Act.

"Critical nesting season" means for marbled murrelets - April 1 to August 31.

"Critical wildlife habitat (state)" means those habitats designated by the board in accordance with WAC 222-16-080.

"Cultural resources" means archaeological and historic sites and artifacts and traditional religious, ceremonial and social uses and activities of affected Indian tribes.

"Cumulative effects" means the changes to the environment caused by the interaction of natural ecosystem processes with the effects of two or more forest practices.

"Daily peak activity" means for marbled murrelets - one hour before official sunrise to two hours after official sunrise and one hour before official sunset to one hour after official sunset.

"Debris" means woody vegetative residue less than 3 cubic feet in size resulting from forest practice activities which would reasonably be expected to cause significant damage to a public resource.

"Debris torrents" are mixtures of water, sediment, and debris that move in and along mountain channels. They include debris flows, and hyperconcentrated floods that may be caused by the collapse of natural or artificial dams (such as landslide dams or debris jams).

"Deep-seated landslides" are landslides in which the zone of movement is below the maximum rooting depth of forest trees, to depths of tens to hundreds of feet. Deep-seated landslides can vary greatly in size (up to thousands of acres) and activity level, and can occur almost anywhere on the hillslope. Deep-seated landslides are usually formed in incompetent materials such as glacial deposits, volcaniclastic rocks, and fault gauge. Commonly, development of a deep-seated landslide begins after a slope has been oversteepened by glacial or fluvial undercutting; however, the initiation of such slides has also been associated with changes in land use, increases in ground-water levels, and the degradation of material strength through natural processes. Movement can be translational, rotational, or complex; range from slow to rapid; and displacements can be small to large.

"Deep-seated landslides in bedrock" commonly occur in masses that are relatively weak. These can include bodies in which the rocks themselves are incompetent, such as certain types of clay-rich sediments and volcanics (e.g., some shales and tuffs), or low-grade metamorphic rocks (e.g., phyllite); or in highly weathered materials, such as deeply weathered rock and saprolite. In other cases, the geologic structure weakens the rock strength: Bedding planes, joints, and faults commonly act as planes of weakness that can become slide surfaces.

"Deep-seated landslides in glacial deposits" are common in thicker glacial deposits, most usually where relatively permeable and impermeable materials are juxtaposed. Impermeable deposits can perch ground water, causing elevated pore-water pressures in the overlying deposits, which can then slide out and downward.

Many deep-seated landslides occur in the lower portions of hillslopes and extend directly into stream channels. In such situations, streams can undercut the landslide toes, promoting further movement; such oversteepened toes can also be sensitive to changes caused by harvest and road construction. On the other hand, deep-seated landslides confined to the upper slopes may not have the ability to deposit material directly into stream channels. The ability of scarps and marginal streams to deliver sediment to waters or structures varies with local topography. Steep marginal streams can be subject to debris-flow initiation.

"Demographic support" means providing sufficient suitable spotted owl habitat within the SOSEA to maintain the viability of northern spotted owl sites identified as necessary to meet the SOSEA goals.

"Department" means the department of natural resources.

"Dispersal habitat" see WAC 222-16-085(2).

"Dispersal support" means providing sufficient dispersal habitat for the interchange of northern spotted owls within or across the SOSEA, as necessary to meet SOSEA goals. Dispersal support is provided by a landscape consisting of stands of dispersal habitat interspersed with areas of higher quality habitat, such as suitable spotted owl habitat found within RMZs, WMZs or other required and voluntary leave areas.

"Drainage management" means road drainage techniques and strategies that prevent sediments from delivering to typed waters.

"Drainage management plan" means a plan that prevents road sediment delivery greater than one half the background level of a defined drainage area.

"Eastern Washington" means the lands of the state lying east of an administrative line which approximates the change from the Western Washington timber types to the Eastern Washington timber types described as follows:

Beginning at the International Border and Okanogan National Forest boundary at the N1/4 corner Section 6, T. 40N, R. 24E., W.M., south and west along the Pasayten Wilderness boundary to the west line of Section 30, T. 37N, R. 19E.,

Thence south on range line between R. 18E. and R. 19E., to the Lake Chelan-Sawtooth Wilderness at Section 31, T. 35N, R. 19E.,

Thence south and east along the eastern wilderness boundary of Lake Chelan-Sawtooth Wilderness to the west line of Section 18, T. 31N, R. 19E. on the north shore of Lake Chelan,

Thence south on the range line between R. 18E. and R. 19E. to the SE corner of T. 28N, R. 18E.,

Thence west on the township line between T. 27N, and T. 28N to the NW corner of T. 27N, R. 17E.,

Thence south on range line between R. 16E. and R. 17E. to the Alpine Lakes Wilderness at Section 31, T. 26N, R. 17E.,

Thence south along the eastern wilderness boundary to the west line of Section 6, T. 22N, R. 17E.,

Thence south on range line between R. 16E. and R. 17E. to the SE corner of T. 22N, R. 16E.,

Thence west along township line between T. 21N, and T. 22N to the NW corner of T. 21N, R. 15E.,

Thence south along range line between R. 14E. and R. 15E. to SW corner of T. 20N, R. 15E.,

Thence east along township line between T. 19N, and T. 20N to the SW corner of T. 20N, R. 16E.,

Thence south along range line between R. 15E. and R. 16E. to the SW corner of T. 18N, R. 16E.,

Thence west along township line between T. 17N, and T. 18N to the SE corner of T. 18N, R. 14E.,

Thence south along range line between T. 14E. and R. 15E. to the SW corner of T. 14N, R. 15E.,

Thence south and west along Wenatchee National Forest Boundary to the NW corner of T. 12N, R. 14E.,

Thence south along range line between R. 13E. and R. 14E. to SE corner of T. 10N, R. 13E.,

Thence west along township line between T. 9N, and T. 10N to the NW corner of T. 9N, R. 12E.,

Thence south along range line between R. 11E. and R. 12E. to SE corner of T. 8N, R. 11E.,

Thence west along township line between T. 7N, and T. 8N to the Gifford Pinchot National Forest Boundary,

Thence south along Forest Boundary to SE corner of Section 33, T. 7N, R. 11E.,

Thence west along township line between T. 6N, and T. 7N to SE corner of T. 7N, R. 9E.,

Thence south along Skamania-Klickitat County line to Oregon-Washington state line.

"End hauling" means the removal and transportation of excavated material, pit or quarry overburden, or landing or road cut material from the excavation site to a deposit site not adjacent to the point of removal.

"Erodible soils" means those soils exposed or displaced by a forest practice operation, that would be readily moved by water.

"Even-aged harvest methods" means the following harvest methods:

Clearcuts;

Seed tree harvests in which twenty or fewer trees per acre remain after harvest;

Shelterwood regeneration harvests in which twenty or fewer trees per acre remain after harvest;

Group or strip shelterwood harvests creating openings wider than two tree heights, based on dominant trees;

Shelterwood removal harvests which leave fewer than one hundred fifty trees per acre which are at least five years old or four feet in average height;

Partial cutting in which fewer than fifty trees per acre remain after harvest;

Overstory removal when more than five thousand board feet per acre is removed and fewer than fifty trees per acre at least ten feet in height remain after harvest; and

Other harvesting methods designed to manage for multiple age classes in which six or fewer trees per acre remain after harvest.

Except as provided above for shelterwood removal harvests and overstory removal, trees counted as remaining after harvest shall be at least ten inches in diameter at breast height and have at least the top one-third of the stem supporting green, live crowns. Except as provided in WAC 222-30-110, an area remains harvested by even-aged methods until it meets the minimum stocking requirements under WAC 222-30-010(2) or 222-34-020(2) and the largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"Fen" means wetlands which have the following characteristics: Peat soils 16 inches or more in depth (except over bedrock); and vegetation such as certain sedges, hardstem bulrush and cattails; fens may have an overstory of spruce and may be associated with open water.

"Fertilizers" means any substance or any combination or mixture of substances used principally as a source of plant food or soil amendment.

"Fill" means the placement of earth material or aggregate for road or landing construction or other similar activities. Fill does not include the growing or harvesting of timber

including, but not limited to, slash burning, site preparation, reforestation, precommercial thinning, intermediate or final harvesting, salvage of trees, brush control, or fertilization.

"Flood level - 50 year." For purposes of field interpretation of these regulations, the 50-year flood level shall be considered to refer to a vertical elevation measured from the ordinary high-water mark which is 1.25 times the vertical distance between the average stream bed and the ordinary high-water mark, and in horizontal extent shall not exceed 2 times the channel width measured on either side from the ordinary high-water mark, unless a different area is specified by the department based on identifiable topographic or vegetative features or based on an engineering computation of flood magnitude that has a 2 percent chance of occurring in any given year. The 50-year flood level shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or under license from the federal government, the state, or a political subdivision of the state.

"Forest land" means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing.

"Forest land owner" shall mean any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner: *Provided*, That any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest land owner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land.

"Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

- Road and trail construction;
- Harvesting, final and intermediate;
- Precommercial thinning;
- Reforestation;
- Fertilization;
- Prevention and suppression of diseases and insects;
- Salvage of trees; and
- Brush control.

"Forest practice" shall not include: Forest species seed orchard operations and intensive forest nursery operations; or preparatory work such as tree marking, surveying and road flagging; or removal or harvest of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber or public resources.

"Forest trees" excludes trees cultivated by agricultural methods in growing cycles shorter than ten years: *Provided*, That Christmas trees are forest trees and: *Provided further*, That this exclusion applies only to trees planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees.

"Green recruitment trees" means those trees left after harvest for the purpose of becoming future wildlife reserve trees under WAC 222-30-020(11).

"Haul, nonrestricted" means hauling is permitted based on a drainage management plan.

"Haul, restricted" means timber and rock hauling is permitted only during those periods sediment is not delivered to typed waters.

"Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any tree, bush, weed or algae and other aquatic weeds.

"Historic site" includes:

Sites, areas and structures or other evidence of human activities illustrative of the origins, evolution and development of the nation, state or locality; or

Places associated with a personality important in history; or

Places where significant historical events are known to have occurred even though no physical evidence of the event remains.

"Hollows": See colluvium-filled bedrock hollows.

"Hyporheic areas" are zones adjacent to and below active channels where interstitial water is exchanged with channel water; water movement is mainly in the downstream direction.

"Identified watershed processes" means the following components of natural ecological processes that may in some instances be altered by forest practices in a watershed:

Mass wasting;

Surface and road erosion;

Seasonal flows including hydrologic peak and low flows and annual yields (volume and timing);

Large organic debris;

Shading; and

Stream bank and bed stability.

"Inner gorges" are canyon walls created by a combination of the downcutting/undercutting action of a stream and mass movement on the slope walls. They are oversteepened, that is, steeper than can be accounted for by slope processes alone, and subject to greater rates of mass wasting as a result. Inner gorges show evidence of recent movement, such as obvious landslides, vertical tracks of disturbance vegetation, or areas that are concave in contour and/or profile. In competent bedrock, slope gradients of 35° or steeper can be maintained, but soil mantles are increasingly sensitive to root-strength loss at these angles; slope gradients as gentle as 28° can be unstable in gorges cut into incompetent bedrock. The top of the inner gorge is typically a distinct break in slope, but in some places the upper boundary is a subtle zone where the slope becomes markedly steeper or convex downhill. Inner gorges can be continuous for great lengths, as along a highly confined stream that is actively downcutting; or they can be discontinuous, as along a flood-plain channel that is undercutting the adjacent hillslopes in isolated places where the stream has meandered to the valley edge. Inner gorges experiencing mass wasting are likely to deliver sediment to waters or structures downhill. Exceptions can occur where benches of sufficient size to stop moving material exist along the gorge walls, but these are uncommon. Inner gorges are

distinguished from ordinary steep valley sides: Ordinary valleys can be V-shaped with distinct slope breaks at the top, but they commonly do not show evidence of recent movement.

In practice, a minimum vertical height of 10 feet should be applied to discriminate inner gorges from slightly incised streams. The upper boundary of an inner gorge is assumed to be a line along the first break in slope of at least 10°, or the line above which slope gradients are typically gentler than 30°.

"Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect, other arthropods or mollusk pests.

"Interdisciplinary team" (ID Team) means a group of varying size comprised of individuals having specialized expertise, assembled by the department to respond to technical questions associated with a proposed forest practice activity.

"Islands" means any island surrounded by salt water in Kitsap, Mason, Jefferson, Pierce, King, Snohomish, Skagit, Whatcom, Island, or San Juan counties.

"Limits of construction" means the area occupied by the completed roadway or landing, including the cut bank, fill slope, and the area cleared for the purpose of constructing the roadway or landing.

"Load bearing portion" means that part of the road, landing, etc., which is supportive soil, earth, rock or other material directly below the working surface and only the associated earth structure necessary for support.

"Local government entity" means the governments of counties and the governments of cities and towns as defined in chapter 35.01 RCW.

"Low impact harvest" means use of any logging equipment, methods, or systems that minimize compaction or disturbance of soils and vegetation during the yarding process. The department shall determine such equipment, methods or systems in consultation with the department of ecology.

"Marbled murrelet detection area" means an area of land associated with a visual or audible detection of a marbled murrelet, made by a qualified surveyor which is documented and recorded in the department of fish and wildlife data base. The marbled murrelet detection area shall be comprised of the section of land in which the marbled murrelet detection was made and the eight sections of land immediately adjacent to that section.

"Marbled murrelet nesting platform" means any horizontal tree structure such as a limb, an area where a limb branches, a surface created by multiple leaders, a deformity, or a debris/moss platform or stick nest equal to or greater than 7 inches in diameter including associated moss if present, that is 50 feet or more above the ground in trees 32 inches dbh and greater (generally over 90 years of age) and is capable of supporting nesting by marbled murrelets.

"Median home range circle" means a circle, with a specified radius, centered on a spotted owl site center. The radius for the median home range circle in the Hoh-Clearwater/Coastal Link SOSEA is 2.7 miles; for all other SOSEAs the radius is 1.8 miles.

"Merchantable stand of timber" means a stand of trees that will yield logs and/or fiber:

Suitable in size and quality for the production of lumber, plywood, pulp or other forest products;

Of sufficient value at least to cover all the costs of harvest and transportation to available markets.

"Northern spotted owl site center" means the location of status 1, 2 or 3 northern spotted owls based on the following definitions:

Status 1:

Pair or reproductive - a male and female heard and/or observed in close proximity to each other on the same visit, a female detected on a nest, or one or both adults observed with young.

Status 2:

Two birds, pair status unknown - the presence or response of two birds of opposite sex where pair status cannot be determined and where at least one member meets the resident territorial single requirements.

Status 3:

Resident territorial single - the presence or response of a single owl within the same general area on three or more occasions within a breeding season with no response by an owl of the opposite sex after a complete survey; or three or more responses over several years (i.e., two responses in year one and one response in year two, for the same general area).

In determining the existence, location, and status of northern spotted owl site centers, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

"Notice to comply" means a notice issued by the department pursuant to RCW 76.09.090 of the act and may require initiation and/or completion of action necessary to prevent, correct and/or compensate for material damage to public resources which resulted from forest practices.

"Occupied marbled murrelet site" means:

(1) A contiguous area of suitable marbled murrelet habitat where at least one of the following marbled murrelet behaviors or conditions occur:

(a) A nest is located; or

(b) Downy chicks or eggs or egg shells are found; or

(c) Marbled murrelets are detected flying below, through, into or out of the forest canopy; or

(d) Birds calling from a stationary location within the area; or

(e) Birds circling above a timber stand within one tree height of the top of the canopy; or

(2) A contiguous forested area, which does not meet the definition of suitable marbled murrelet habitat, in which any of the behaviors or conditions listed above has been documented by the department of fish and wildlife and which is distinguishable from the adjacent forest based on vegetative characteristics important to nesting marbled murrelets.

(3) For sites defined in (1) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

PROPOSED

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the vegetative characteristics listed under "suitable marbled murrelet habitat"; or

(c) The beginning of any narrow area of "suitable marbled murrelet habitat" less than 300 feet in width and more than 300 feet in length.

(4) For sites defined under (2) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the distinguishing vegetative characteristics important to murrelets; or

(c) The beginning of any narrow area of suitable marbled murrelet habitat, comparable to the area where the observed behaviors or conditions listed in (1) above occurred, less than 300 feet in width and more than 300 feet in length.

(5) In determining the existence, location and status of occupied marbled murrelet sites, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

"Old forest habitat" see WAC 222-16-085 (1)(a).

"Operator" shall mean any person engaging in forest practices except an employee with wages as his/her sole compensation.

"Ordinary high-water mark" means the mark on the shores of all waters, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation: *Provided*, That in any area where the ordinary high-water mark cannot be found, the ordinary high-water mark adjoining saltwater shall be the line of mean high tide and the ordinary high-water mark adjoining freshwater shall be the line of mean high-water.

"Other forest chemicals" means fire retardants when used to control burning (other than water), nontoxic repellents, oil, dust-control agents (other than water), salt, and other chemicals used in forest management, except pesticides and fertilizers, that may present hazards to the environment.

"Park" means any park included on the parks register maintained by the department pursuant to WAC 222-20-100(2). Developed park recreation area means any park area developed for high density outdoor recreation use.

"Partial cutting" means the removal of a portion of the merchantable volume in a stand of timber so as to leave an uneven-aged stand of well-distributed residual, healthy trees that will reasonably utilize the productivity of the soil. Partial cutting does not include seedtree or shelterwood or other types of regeneration cutting.

"Pesticide" means any insecticide, herbicide, fungicide, or rodenticide but does not include nontoxic repellents or other forest chemicals.

"Plantable area" is an area capable of supporting a commercial stand of timber excluding lands devoted to permanent roads, utility rights-of-way, that portion of riparian management zones where scarification is not permitted, and any other area devoted to a use incompatible with commercial timber growing.

"Power equipment" means all machinery operated with fuel burning or electrical motors, including heavy machinery, chain saws, portable generators, pumps, and powered backpack devices.

"Public resources" means water, fish, and wildlife and in addition shall mean capital improvements of the state or its political subdivisions.

"Qualified expert" means a person qualified for level 2 certification in the watershed analysis process, plus at least 5 years of experience in the evaluation of relevant problems in forested lands.

"Qualified surveyor" means an individual who has successfully completed the marbled murrelet field training course offered by the department of fish and wildlife or its equivalent.

"Rehabilitation" means the act of renewing, or making usable and reforesting forest land which was poorly stocked or previously nonstocked with commercial species.

"Relief culvert" means a structure to relieve surface runoff from roadside ditches to prevent excessive buildup in water volume and velocity.

"Resource characteristics" means the following specific measurable characteristics of fish, water, and capital improvements of the state or its political subdivisions:

For fish and water:

Physical fish habitat, including temperature and turbidity;

Turbidity in hatchery water supplies; and

Turbidity and volume for areas of water supply.

For capital improvements of the state or its political subdivisions:

Physical or structural integrity.

If the methodology is developed and added to the manual to analyze the cumulative effects of forest practices on other characteristics of fish, water, and capital improvements of the state or its subdivisions, the board shall amend this list to include these characteristics.

"Riparian management zone" means a specified area alongside ((Type 1, 2 and 3 Waters)) any typed waters where specific measures are taken to protect water quality and fish and wildlife habitat.

"Road sediment delivery" means sediment is entering a typed water from the road prism.

"Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents or any other vertebrate animal which the director of the state department of agriculture may declare by regulation to be a pest.

"Salvage" means the removal of snags, down logs, windthrow, or dead and dying material.

"Scarification" means loosening the topsoil and/or disrupting the forest floor in preparation for regeneration.

"Seeps" are areas where water slowly percolates to the ground surface, commonly in a line controlled by fractures or bedding in the underlying rock, or where the local water table intercepts the surface. Seepage flow is insufficient to cause formation of a distinct channel, so the water moves downhill by overland flow; seeps are not directly connected to the channel network, but the flow may nevertheless be important for some ecosystem functions.

"Seeps, headwall" are those located on valley-head slopes, ridgeward of the upper end of the defined channel.

"Seeps, perennial" are those that flow through the dry season.

"Shorelines of the state" shall have the same meaning as in RCW 90.58.030 (Shoreline Management Act).

"Side casting" means the act of moving excavated material to the side and depositing such material within the limits of construction or dumping over the side and outside the limits of construction.

"Site preparation" means those activities associated with the removal of slash in preparing a site for planting and shall include scarification and/or slash burning.

"Skid trail" means a route used by tracked or wheeled skidders to move logs to a landing or road.

"Slash" means pieces of woody material containing more than 3 cubic feet resulting from forest practice activities.

"SOSEA goals" means the goals specified for a spotted owl special emphasis area as identified on the SOSEA maps (see WAC 222-16-086). SOSEA goals provide for demographic and/or dispersal support as necessary to complement the northern spotted owl protection strategies on federal land within or adjacent to the SOSEA.

"Spoil" means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

"Spotted owl dispersal habitat" see WAC 222-16-085(2).

"Spotted owl special emphasis areas (SOSEA)" means the geographic areas as mapped in WAC 222-16-086. Detailed maps of the SOSEAs indicating the boundaries and goals are available from the department at its regional offices.

"Springs" are areas where water percolates to the ground surface, commonly in a point or limited area, controlled by fractures or bedding in the underlying rock, or where the local water table intercepts the surface. Where spring flow is sufficient to cause surface erosion, it may be the channel initiation point; springs can also occur within channels.

"Springs, perennial" are those that flow through the dry season. The upstream point of perennial flow in a channel is a perennial spring.

"Stop work order" means the "stop work order" defined in RCW 76.09.080 of the act and may be issued by the department to stop violations of the forest practices chapter or to prevent damage and/or to correct and/or compensate for damages to public resources resulting from forest practices.

"Streams" are channelized bodies of flowing water.

"Streams, perennial" are those that flow throughout the dry season. For a given stream, the entire length of channel downstream of a perennial seep or spring is considered perennial, whether or not there is water above the ground surface all year.

"Streams, seasonal" are those that do not flow throughout the year; channel reaches upstream of perennial springs.

"Sub-mature habitat" see WAC 222-16-085 (1)(b).

"Suitable marbled murrelet habitat" means a contiguous forested area containing trees capable of providing nesting opportunities:

(1) With all of the following indicators unless the department, in consultation with the department of fish and wildlife, has determined that the habitat is not likely to be occupied by marbled murrelets:

(a) Within 50 miles of marine waters;

(b) At least 40% of the dominant and codominant trees are Douglas-fir, western hemlock, western red cedar or sitka spruce;

(c) Two or more nesting platforms per acre;

(d) At least 7 acres in size, including the contiguous forested area within 300 feet of nesting platforms, with similar forest stand characteristics (age, species composition, forest structure) to the forested area in which the nesting platforms occur.

"Suitable spotted owl habitat" see WAC 222-16-085(1).

"Temporary road" means a roadway which has been opened for the purpose of the forest practice operation in question, and thereafter will be an abandoned road.

"Threatened or endangered species" means all species of wildlife listed as "threatened" or "endangered" by the United States Secretary of the Interior or the United States Secretary of Commerce, and all species of wildlife designated as "threatened" or "endangered" by the Washington fish and wildlife commission.

"Timber" shall mean forest trees, standing or down, of a commercial species, including Christmas trees.

"Water bar" means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation duff, ditch, or other dispersion area so that it does not gain the volume and velocity which causes soil movement and erosion.

"Watershed administrative unit (WAU)" means an area shown on the map specified in WAC 222-22-020(1).

"Watershed analysis" means, for a given WAU, the assessment completed under WAC 222-22-050 or 222-22-060 together with the prescriptions selected under WAC 222-22-070 and shall include assessments completed under WAC 222-22-050 where there are no areas of resource sensitivity.

"Weed" is any plant which tends to overgrow or choke out more desirable vegetation.

"Western Washington" means the lands of the state lying west of the administrative line described in the definition of Eastern Washington.

"Wetland" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do sup-

port, a prevalence of vegetation typically adapted for life in saturated soil conditions, such as swamps, bogs, fens, and similar areas. This includes wetlands created, restored, or enhanced as part of a mitigation procedure. This does not include constructed wetlands or the following surface waters of the state intentionally constructed from wetland sites: Irrigation and drainage ditches, grass lined swales, canals, agricultural detention facilities, farm ponds, and landscape amenities.

"Wetland functions" include the protection of water quality and quantity, flood control, bank stabilization, contributions to ground water and streamflows, and providing fish and wildlife habitat, and the production of timber. These functions may vary from wetland to wetland.

"Wetland management zone" means a specified area adjacent to Type A and B Wetlands where specific measures are taken to protect the wetland functions.

"Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. The term "wildlife" includes, but is not limited to, any mammal, bird, reptile, amphibian, fish, or invertebrate, at any stage of development. The term "wildlife" does not include feral domestic mammals or the family Muridae of the order Rodentia (old world rats and mice).

"Wildlife reserve trees" means those defective, dead, damaged, or dying trees which provide or have the potential to provide habitat for those wildlife species dependent on standing trees. Wildlife reserve trees are categorized as follows:

Type 1 wildlife reserve trees are defective or deformed live trees that have observably sound tops, limbs, trunks, and roots. They may have part of the top broken out or have evidence of other severe defects that include: "Cat face," animal chewing, old logging wounds, weather injury, insect attack, or lightning strike. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 1 wildlife reserve trees. These trees must be stable and pose the least hazard for workers.

Type 2 wildlife reserve trees are dead Type 1 trees with sound tops, limbs, trunks, and roots.

Type 3 wildlife reserve trees are live or dead trees with unstable tops or upper portions. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 3 wildlife reserve trees. Although the roots and main portion of the trunk are sound, these reserve trees pose high hazard because of the defect in live or dead wood higher up in the tree.

Type 4 wildlife reserve trees are live or dead trees with unstable trunks or roots, with or without bark. This includes "soft snags" as well as live trees with unstable roots caused by root rot or fire. These trees are unstable and pose a high hazard to workers.

"Winds, favorable" means those winds where the wind direction effectively moves the spray cloud away from water, RMZ, or WMZ, based on visual observation of spray drift.

"Winds, unfavorable" means any winds which are not clearly favorable (see favorable winds) including calm condi-

tions, inversions, or conditions of highly variable wind direction.

"Windthrow" means a natural process by which trees are uprooted or sustain severe trunk damage by the wind.

"Young forest marginal habitat" see WAC 222-16-085 (1)(b).

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-16-030 Water typing system. *The department in cooperation with the departments of fish and wildlife, and ecology, and in consultation with affected Indian tribes shall classify streams, lakes and ponds and prepare stream classification maps showing the location of Type ((1, 2, 3 and 4-Waters)) S, F, and N waters within the various forested areas of the state. Such maps shall be available for public inspection at region offices of the department. The waters will be classified using the following criteria. If a dispute arises concerning a water type the department shall make available informal conferences, which shall include the departments of fish and wildlife, and ecology, and affected Indian tribes and those contesting the adopted water types. These conferences shall be established under procedures established in WAC 222-46-020.

*(1) **"Type ((1-Water)) S water"** means all waters, within their ordinary high-water mark, as inventoried as "shorelines of the state" under chapter 90.58 RCW and the rules promulgated pursuant to chapter 90.58 RCW, but not including those waters' associated wetlands as defined in chapter 90.58 RCW.

*(2) **"Type ((2-Water)) F water"** ((shall)) means segments of natural waters which are not classified as Type ((1-Water)) S water and ((have a high fish, wildlife, or human use)) contain fish habitat or are used by wildlife or humans. These are segments of natural waters and periodically inundated areas of their associated wetlands, which:

(a) Are diverted for domestic use by more than ((100)) 10 residential or camping units or by a public accommodation facility licensed to serve more than ((100)) 10 persons, where such diversion is determined by the department to be a valid appropriation of water and the only practical water source for such users. Such waters shall be considered to be Type ((2-Water)) F water upstream from the point of such diversion for 1,500 feet or until the drainage area is reduced by 50 percent, whichever is less;

(b) Are within a federal, state, local, or private campground having more than ((30)) 10 camping units: *Provided*, That the water shall not be considered to enter a campground until it reaches the boundary of the park lands available for public use and comes within 100 feet of a camping unit, trail or other park improvement;

(c) Have the potential to be used by fish. The department will make maps available that represent fish habitat. These maps will be prepared using a multiparameter model(s) that uses geomorphic data such as stream gradient, basin size, elevation and precipitation to estimate where fish habitat is likely to be.

(d) Lakes, ponds, or impoundments having a surface area of 0.5 acre or greater at seasonal low water.

((Are used by substantial numbers of anadromous or resident game fish for spawning, rearing or migration. Waters having the following characteristics are presumed to have highly significant fish populations:

(i) Stream segments having a defined channel 20 feet or greater in width between the ordinary high water marks and having a gradient of less than 4 percent.

(ii) Lakes, ponds, or impoundments having a surface area of 1 acre or greater at seasonal low water; or

(d) Are used by salmonids for off channel habitat. These areas are critical to the maintenance of optimum survival of juvenile salmonids. This habitat shall be identified based on the following criteria:

(i) The site must be connected to a stream bearing salmonids and accessible during some period of the year; and

(ii) The off channel water must be accessible to juvenile salmonids through a drainage with less than a 5% gradient.

*(3) "Type 3 Water" shall mean segments of natural waters which are not classified as Type 1 or 2 Water and have a moderate to slight fish, wildlife, and human use. These are segments of natural waters and periodically inundated areas of their associated wetlands which:

(a) Are diverted for domestic use by more than 10 residential or camping units or by a public accommodation facility licensed to serve more than 10 persons, where such diversion is determined by the department to be a valid appropriation of water and the only practical water source for such users. Such waters shall be considered to be Type 3 Water upstream from the point of such diversion for 1,500 feet or until the drainage area is reduced by 50 percent, whichever is less;

(b) Are used by significant numbers of anadromous fish for spawning, rearing or migration. Waters having the following characteristics are presumed to have significant anadromous fish use:

(i) Stream segments having a defined channel of 5 feet or greater in width between the ordinary high water marks; and having a gradient of less than 12 percent and not upstream of a falls of more than 10 vertical feet.

(ii) Ponds or impoundments having a surface area of less than 1 acre at seasonal low water and having an outlet to an anadromous fish stream.

(e) Are used by significant numbers of resident game fish. Waters with the following characteristics are presumed to have significant resident game fish use:

(i) Stream segments having a defined channel of 10 feet or greater in width between the ordinary high water marks; and a summer low flow greater than 0.3 cubic feet per second; and a gradient of less than 12 percent.

(ii) Ponds or impoundments having a surface area greater than 0.5 acre at seasonal low water; or

(d) Are highly significant for protection of downstream water quality. Tributaries which contribute greater than 20 percent of the flow to a Type 1 or 2 Water are presumed to be significant for 1,500 feet from their confluence with the Type 1 or 2 Water or until their drainage area is less than 50 percent of their drainage area at the point of confluence, whichever is less.))

*((4)) (3) "Type 4 Water" means ((classification shall be applied to)) segments of natural waters

which are not classified as Type ((1, 2 or 3, and for the)) S or F. Their purpose ((of protecting)) is to protect water quality and nonfish biota including stream associated amphibians and freshwater shellfish. Waters diverted for established domestic use by 10 or less residents ((downstream)) are classified as Type ((4 Water)) N water upstream until the channel ((width becomes less than 2 feet in width between the ordinary high water marks. Their significance lies in their influence on water quality downstream in Type 1, 2, and 3 Waters. These may be perennial or intermittent.)) initiation point. These waters may include seasonal streams with defined channels. Their significance includes providing cool water downstream, sediment storage, and habitat for stream associated amphibians

((5) "Type 5 Water" classification shall be applied to all natural waters not classified as Type 1, 2, 3 or 4; including streams with or without well defined channels, areas of perennial or intermittent seepage, ponds, natural sinks and drainageways having short periods of spring or storm runoff.))

*(((6))) (4) For purposes of this section:

(a) "**Residential unit**" means a home, apartment, residential condominium unit or mobile home, serving as the principal place of residence.

(b) "**Camping unit**" means an area intended and used for:

(i) Overnight camping or picnicking by the public containing at least a fireplace, picnic table and access to water and sanitary facilities; or

(ii) A permanent home or condominium unit or mobile home not qualifying as a "residential unit" because of part time occupancy.

(c) (("**Resident game fish**"")) "**Fish habitat**" means habitat of any ((game)) fish ((as described in the Washington game code that spend their life cycle in fresh water. Steelhead, searun cutthroat and Dolly Varden trout are anadromous game fish and should not be confused with resident game fish.)) species including, but not limited to food fish, shellfish, game fish, and other nonclassified fish species and all stages of development.

(d) "**Public accommodation facility**" means a business establishment open to and licensed to serve the public, such as a restaurant, tavern, motel or hotel.

(e) "**Natural waters**" only excludes water conveyance systems which are artificially constructed and actively maintained for irrigation.

(f) "**Seasonal low flow**" and "**seasonal low water**" mean the conditions of the 7-day, 2-year low water situation, as measured or estimated by accepted hydrologic techniques recognized by the department.

(g) (("**Channel width and gradient**" means a measurement over a representative section of at least 500 linear feet with at least 10 evenly spaced measurement points along the normal stream channel but excluding unusually wide areas of negligible gradient such as marshy or swampy areas, beaver ponds and impoundments. Channel gradient may be determined utilizing stream profiles plotted from United States geological survey topographic maps.

(h) "Intermittent") "Seasonal streams" means those segments of streams that normally go dry.

AMENDATORY SECTION (Amending WSR 98-07-047, filed 3/13/98, effective 5/1/98)

WAC 222-16-050 Classes of forest practices. There are 4 classes of forest practices created by the act. All forest practices (including those in Classes I and II) must be conducted in accordance with the forest practices regulations.

(1) "Class IV - special." Application to conduct forest practices involving the following circumstances requires an environmental checklist in compliance with the State Environmental Policy Act (SEPA), and SEPA guidelines, as they have been determined to have potential for a substantial impact on the environment. It may be determined that additional information or a detailed environmental statement is required before these forest practices may be conducted.

*(a) Aerial application of pesticides in a manner identified as having the potential for a substantial impact on the environment under WAC 222-16-070 or ground application of a pesticide within a Type A or B wetland.

(b) Specific forest practices listed in WAC 222-16-080 on lands designated as:

(i) Critical wildlife habitat (state) of threatened or endangered species; or

(ii) Critical habitat (federal) of threatened or endangered species except those excluded by the board under WAC 222-16-080(3).

(c) Harvesting, road construction, aerial application of pesticides and site preparation on all lands within the boundaries of any national park, state park, or any park of a local governmental entity, except harvest of less than 5 MBF within any developed park recreation area and park managed salvage of merchantable forest products.

*(d) Construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas ((~~on slide prone areas as defined in WAC 222-24-020(6) and field verified by the department,~~)) in a watershed administrative unit that has not undergone a watershed analysis under chapter 222-22 WAC, ((~~when such slide prone areas occur on an uninterrupted slope above water typed pursuant to WAC 222-16-030,~~)) ~~on landforms that are likely to be or are potentially unstable, where such landforms are located above any typed water~~, Type A or Type B Wetland, or a capital improvement of the state or its political subdivisions, ~~or privately owned structure~~, where there is a potential for a substantial ~~landslide or debris ((flow or mass failure)) torrent~~ to cause significant impact to public resources.

(i) ~~It is assumed that slope instability is likely in inner gorges, bedrock hollows, and convergent headwalls steeper than 35° (70%), on the toes of deep-seated landslides steeper than 33° (65%), or on any soil-covered slopes steeper than 38° (80%). An analysis of the stability of the site and the proposed forest practices by a qualified expert, in accordance with WAC 222-10-030, shall be submitted with the application.~~

(ii) ~~It is assumed that slope instability is possible in inner gorges, bedrock hollows, convergent headwalls, or on any~~

~~other soil-covered slopes steeper than 30° (60%), or on the toes of any deep-seated landslides. For such slopes that are gentler than those described in (i), an evaluation of the stability of the site and the proposed forest practices by a trained field forester shall be submitted with an application, documenting the lines of evidence indicating the condition of the potentially unstable areas. This information shall be reviewed by a qualified expert who will be responsible for the information.~~

~~(iii) The potential for delivery of sediment and debris, and the length of potential channel disturbance zones, shall be determined by accepted methods as described in the *Forest Practices Board Manual*. If a local determination of delivery potential has not or can not be made from aerial photographs or field evidence, it will be assumed that delivery can occur downhill to a distance 500 feet below the point where the slope becomes gentler than 26° (50%). For all designated delivery areas and channel disturbance zones, channel conditions and potential problems relating to slope instability and debris torrents shall be evaluated, and the information submitted with the stability analyses.~~

~~(iv) The information submitted, and the review by the department (including the decision on classification), shall be in accordance with WAC 222-10-030.~~

*(e) Timber harvest in a watershed administrative unit that has not undergone a watershed analysis under chapter 222-22 WAC, ((~~on slide prone areas, field verified by the department,~~)) ~~on landforms that are likely to be or are potentially unstable, where soils, geologic structure, and local hydrology indicate that canopy removal has the potential for increasing slope instability, ((~~when such areas occur on an uninterrupted slope above any water typed pursuant to WAC 222-16-030,~~)) where such landforms are located above any typed water~~, Type A or Type B Wetland, or a capital improvement of the state or its political subdivisions, ~~or privately owned structure~~, where there is a potential for a substantial ~~landslide or debris ((flow or mass failure)) torrent~~ to cause significant impact to public resources.

~~(i) It is assumed that slope instability is likely in inner gorges, bedrock hollows, and convergent headwalls steeper than 35° (70%), on the toes of deep-seated landslides steeper than 33° (65%), or on any soil-covered slopes steeper than 38° (80%). An analysis of the stability of the site and the proposed forest practices by a qualified expert, in accordance with WAC 222-10-030, shall be submitted with the application.~~

~~(ii) It is assumed that slope instability is possible in inner gorges, bedrock hollows, convergent headwalls steeper than 33° (65%), on any other soil-covered slopes steeper than 35° (70%), or on the toes of deep-seated landslides steeper than 30° (60%). For such slopes that are gentler than those described in (i), an evaluation of the stability of the site and the proposed forest practices by a trained field forester shall be submitted with the application, documenting the lines of evidence indicating the condition of the potentially unstable areas. This information shall be reviewed by a qualified expert who will be responsible for the information.~~

(iii) The potential for delivery of sediment and debris, and the length of potential channel disturbance zones, shall be determined by accepted methods as described in the Forest Practices Board Manual. If a local determination of delivery potential has not or can not be made from aerial photographs or field evidence, it will be assumed that delivery can occur downhill to a distance 500 feet below the point where the slope becomes gentler than 26° (50%). For all designated delivery areas and channel disturbance zones, channel conditions and potential problems relating to slope instability and debris torrents shall be evaluated, and the information submitted with the stability analyses.

(iv) The information submitted, and the review by the department (including the decision on classification), shall be in accordance with WAC 222-10-030.

(f) Timber harvest, in a watershed administrative unit that has not undergone a watershed analysis under chapter 222-22 WAC, construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas on snow avalanche slopes within those areas designated by the department, in consultation with department of transportation, as high avalanche hazard.

(g) Timber harvest, construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas on archaeological or historic sites registered with the Washington state office of archaeology and historic preservation, or on sites containing evidence of Native American cairns, graves, or glyptic records, as provided for in chapters 27.44 and 27.53 RCW. The department shall consult with affected Indian tribes in identifying such sites.

*(h) Forest practices subject to a watershed analysis conducted under chapter 222-22 WAC in an area of resource sensitivity identified in that analysis which deviates from the prescriptions (which may include an alternate plan) in the watershed analysis.

*(i) Filling or draining of more than 0.5 acre of a wetland.

*(j) Construction of roads, landings, rock quarries, gravel pits, borrow pits, and spoil disposal areas within 200 feet of a Type S water.

(2) "Class IV - general." Applications involving the following circumstances are "Class IV - general" forest practices unless they are listed in "Class IV - special." Upon receipt of an application, the department will determine the lead agency for purposes of compliance with the State Environmental Policy Act pursuant to WAC 197-11-924 and 197-11-938(4) and RCW 43.21C.037(2). Such applications are subject to a 30-day period for approval unless the lead agency determines a detailed statement under RCW 43.21C.030 (2)(c) is required. Upon receipt, if the department determines the application is for a proposal that will require a license from a county/city acting under the powers enumerated in RCW 76.09.240, the department shall notify the applicable county/city under WAC 197-11-924 that the department has determined according to WAC 197-11-938(4) that the county/city is the lead agency for purposes of compliance with State Environmental Policy Act.

(a) Forest practices (other than those in Class I) on lands platted after January 1, 1960, or on lands being converted to another use.

(b) Forest practices which would otherwise be Class III, but which are taking place on lands which are not to be reforested because of likelihood of future conversion to urban development. (See WAC 222-16-060 and 222-34-050.)

(3) "Class I." Those operations that have been determined to have no direct potential for damaging a public resource are Class I forest practices. When the conditions listed in "Class IV - Special" are not present, these operations may be commenced without notification or application.

(a) Culture and harvest of Christmas trees and seedlings.

*(b) Road maintenance except: (i) Replacement of bridges and culverts across ((Type 1, 2, 3 or flowing Type 4 Waters)) any typed waters; or (ii) movement of material that has a direct potential for entering ((Type 1, 2, 3 or flowing Type 4 Waters)) any typed waters or Type A or B Wetlands.

*(c) Construction of landings less than 1 acre in size, if not within a shoreline area of a Type ((1-Water)) S water, the riparian management zone of a Type ((2 or 3 Water, the ordinary high water mark of a Type 4 Water)) any typed water, a wetland management zone, a wetland, or the CRGNSA special management area.

*(d) Construction of less than 600 feet of road on a side-slope of 40 percent or less if the limits of construction are not within the ((shoreline area of a Type 1 Water, the riparian management zone of a Type 2 or Type 3 Water, the ordinary high water mark of a Type 4 Water)) 200 feet of any typed water, a wetland management zone, a wetland, or the CRGNSA special management area.

*(e) Installation or removal of a portable water crossing structure where such installation does not take place within the shoreline area of a Type ((1-Water)) S water and does not involve disturbance of the beds or banks of any waters.

*(f) Initial installation and replacement of relief culverts and other drainage control facilities not requiring a hydraulic permit.

(g) Rocking an existing road.

(h) Loading and hauling timber from landings or decks.

(i) Precommercial thinning and pruning, if not within the CRGNSA special management area.

(j) Tree planting and seeding.

(k) Cutting and/or removal of less than 5,000 board feet of timber (including live, dead and down material) for personal use (i.e., firewood, fence posts, etc.) in any 12-month period, if not within the CRGNSA special management area.

(l) Emergency fire control and suppression.

(m) Slash burning pursuant to a burning permit (RCW 76.04.205).

*(n) Other slash control and site preparation not involving either off-road use of tractors on slopes exceeding 40 percent or off-road use of tractors within the shorelines of a Type ((1-Water)) S water, the riparian management zone of any ((Type 2 or 3 Water, or the ordinary high water mark of a Type 4 Water,)) type water, a wetland management zone, a wetland, or the CRGNSA special management area.

*(o) Ground application of chemicals, if not within the CRGNSA special management area. (See WAC 222-38-020 and 222-38-030.)

***(p)** Aerial application of chemicals (except insecticides), outside of the CRGNSA special management area when applied to not more than 40 contiguous acres if the application is part of a combined or cooperative project with another landowner and where the application does not take place within 100 feet of lands used for farming, or within 200 feet of a residence, unless such farmland or residence is owned by the forest landowner. Provisions of chapter 222-38 WAC shall apply.

(q) Forestry research studies and evaluation tests by an established research organization.

(r) Any of the following if none of the operation or limits of construction takes place within the shoreline area of a Type ~~((1-Water))~~ S water or the riparian management zone of a Type ~~((2-or-3-Water))~~ F water, ~~((the ordinary high water mark of a Type 4 Water or flowing Type 5 Water))~~ bankfull width of a Type N water, or within the CRGNSA special management area and the operation does not involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than 40 percent:

(i) Any forest practices within the boundaries of existing golf courses.

(ii) Any forest practices within the boundaries of existing cemeteries which are approved by the cemetery board.

(iii) Any forest practices involving a single landowner where contiguous ownership is less than two acres in size.

(s) Removal of beaver structures from culverts on active and inactive roads. A hydraulics project approval from the Washington department of fish and wildlife may be required.

(4) **"Class II."** Certain forest practices have been determined to have a less than ordinary potential to damage a public resource and may be conducted as Class II forest practices: *Provided*, That no forest practice enumerated below may be conducted as a Class II forest practice if the operation requires a hydraulic project approval (RCW 75.20.100) or is within a "shorelines of the state," or involves a bond in lieu of landowners signature (other than renewals) or is a multiyear permit. Such forest practices require an application. No forest practice enumerated below may be conducted as a "Class II" forest practice if it takes place on lands platted after January 1, 1960, or on lands being converted to another use. Such forest practices require a Class IV application. Class II forest practices are the following:

(a) Renewal of a prior Class II notification where no change in the nature and extent of the forest practices is required under rules effective at the time of renewal.

(b) Renewal of a previously approved Class III or IV forest practice application where:

(i) No modification of the uncompleted operation is proposed;

(ii) No notices to comply, stop work orders or other enforcement actions are outstanding with respect to the prior application; and

(iii) No change in the nature and extent of the forest practice is required under rules effective at the time of renewal.

***(c)** Any of the following if none of the operation or limits of construction takes place within the riparian management zone of a Type 2 or 3 Water, within the ordinary high-water mark of a Type 4 Water, within a wetland management

zone, within a wetland, or within the CRGNSA special management area:

(i) Construction of advance fire trails.

(ii) Opening a new pit of, or extending an existing pit by, less than 1 acre.

***(d)** Any of the following if none of the operation or limits of construction takes place within ~~((the riparian management zone of a Type 2 or 3 Water, within the ordinary high-water mark of a Type 4 Water))~~ 200 feet of the bankfull width of any typed waters, within a wetland management zone or within a wetland; and if none of the operations involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than 40 percent:

Salvage of logging residue.

***(e)** Any of the following if none of the operation or limits of construction takes place within the riparian management zone of ~~((a Type 2 or 3 Water, within the ordinary high-water mark of a Type 4 Water))~~ any typed water, within a wetland management zone, within a wetland, or within the CRGNSA special management area, and if none of the operations involve off-road use of tractor or wheeled skidding systems on a sideslope of greater than 40 percent, and if none of the operations are located on lands with a likelihood of future conversion (see WAC 222-16-060):

(i) West of the Cascade summit, partial cutting of 40 percent or less of the live timber volume.

(ii) East of the Cascade summit, partial cutting of 5,000 board feet per acre or less.

(iii) Salvage of dead, down, or dying timber if less than 40 percent of the total timber volume is removed in any 12-month period.

(iv) Any harvest on less than 40 acres.

(v) Construction of ~~((600 or more feet of))~~ roads outside areas of high surface erosion, unstable areas and hydric soils, provided that the department shall be notified at least 2 business days before commencement of the construction.

(5) "Class III." Forest practices not listed under Classes IV, I or II above are "Class III" forest practices. Among Class III forest practices are the following:

(a) Those requiring hydraulic project approval (RCW 75.20.100).

***(b)** Those within the shorelines of the state other than those in a Class I forest practice.

***(c)** Aerial application of insecticides, except where classified as a Class IV forest practice.

***(d)** Aerial application of chemicals (except insecticides), except where classified as Class I or IV forest practices.

***(e)** Harvest or salvage of timber except where classed as Class I, II or IV forest practices.

***(f)** All road construction and reconstruction except as listed in Classes I, II and IV forest practices.

(g) Opening of new pits or extensions of existing pits over 1 acre.

***(h)** Road maintenance involving:

(i) Replacement of bridges or culverts across ~~((Type 1, 2, 3, or flowing Type 4 Waters))~~ any typed waters; or

(ii) Movement of material that has a direct potential for entering ~~((Type 1, 2, 3 or flowing Type 4 Waters))~~ any typed waters or Type A or B Wetlands.

(i) Operations involving an applicant's bond in lieu of a landowner's signature.

(j) Site preparation or slash abatement not listed in Classes I or IV forest practices.

(k) Harvesting, road construction, site preparation or aerial application of pesticides on lands which contain cultural, historic or archaeological resources which, at the time the application or notification is filed, are:

(i) On or are eligible for listing on the National Register of Historic Places; or

(ii) Have been identified to the department as being of interest to an affected Indian tribe.

(l) Harvesting exceeding 19 acres in a designated difficult regeneration area.

(m) Utilization of an alternate plan. See WAC 222-12-040.

*(n) Any filling of wetlands, except where classified as Class IV forest practices.

*(o) Multiyear permits.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 98-07-047, filed 3/13/98, effective 5/1/98)

WAC 222-20-010 Applications and notifications—

Policy. (1) **No Class II, III or IV forest practices** shall be commenced or continued unless the department has received a notification for Class II forest practices, or approved an application for Class III or IV forest practices pursuant to the act. Where the time limit for the department to act on the application has expired, and none of the conditions in WAC 222-20-020(1) exist, the operation may commence. (NOTE: OTHER LAWS AND REGULATIONS AND/OR PERMIT REQUIREMENTS MAY APPLY. SEE CHAPTER 222-50 WAC.)

(2) **The department shall** prescribe the form and contents of the notification and application, which shall specify what information is needed for a notification, and the information required for the department to approve or disapprove the application.

(3) **Applications and notifications** for operations not converting to another use shall be signed by the landowner, the timber owner and the operator, or the operator and accompanied by a consent form signed by the timber owner and the landowner. A consent form may be another document if it is signed by the landowner(s) and it contains a statement acknowledging that he/she is familiar with the Forest Practices Act, including the provisions dealing with conversion to another use (RCW 76.09.060(3)). Where the application is not signed by the landowner, the department shall, provided all the other requirements contained in chapter 222-20 WAC are met, approve the application without the signature of the landowner if:

(a) The operator or timber owner provides legal evidence of timber rights, ownership, or other legal rights;

(b) The timber owner or operator posts a bond, in an amount determined by and a form acceptable to the department, securing compliance with the requirements of the forest practices regulations; and

(c) The operator or timber owner provides evidence of reasonably advance notification to the landowner of the proposed forest practice and that the landowner has been requested to sign the application, a copy of which has been made available to the landowner: *Provided*, That in lieu of such evidence the applicant may submit a sworn statement indicating inability to locate the landowner after a reasonable good faith attempt to locate and notify the landowner of the proposed forest practice.

(4) **Where an application** for a conversion is not signed by the landowner or accompanied by a consent form, as outlined in subsection (3) of this section, the department shall not approve the application. Applications and notifications for the development or maintenance of utility rights of way shall not be considered to be conversions.

(5) **Transfer of the** approved application or notification to a new landowner, timber owner or operator requires written notice by the original landowner or applicant to the department and should include the original application or notification number. This written notice shall be in a form acceptable to the department and shall contain an affirmation signed by the new landowner, timber owner, or operator, as applicable, that he/she agrees to be bound by all conditions on the approved application or notification. In the case of a transfer of an application previously approved without the landowner's signature the new timber owner or operator must submit a bond securing compliance with the requirements of the forest practices regulations as determined necessary by the department. If an application or notification ((~~indicates that the landowner or timber owner is also~~) has been signed by the operator, ((or an operator signed the application,)) then no notice need be given regarding any change in subcontractors or similar independent contractors working under the supervision of the operator of record. Operations on an approved application/notification cannot commence until the name of the operator is known and the written notice has been provided to the department.

(6) **Applications and notifications** must be delivered to the department at the appropriate region office. Delivery should be in person or by registered or certified mail.

(7) **Applications and notifications** shall be considered received on the date and time shown on any registered or certified mail receipt, or the written receipt given at the time of personal delivery, or at the time of receipt by general mail delivery. Applications or notifications that are not complete, or are inaccurate will not be considered officially received until the applicant furnishes the necessary information to complete the application. A review statement from the U.S. Forest Service that evaluates compliance of the forest practices with the CRGNSA special management area guidelines is necessary information for an application or notification within the CRGNSA special management area. The review statement requirement shall be waived if the applicant can demonstrate the U.S. Forest Service received a complete plan application and failed to act within 45 days. An environmental checklist (WAC 197-11-315) is necessary information for all Class IV applications. A local government entity clearing and/or grading permit is necessary information for all Class IV applications on lands that will be converted to a use other than commercial timber production or on lands which have

been platted after January 1, 1960, if the local government entity has jurisdiction and has an ordinance requiring such permit. If a notification or application is delivered in person to the department by the operator or the operator's authorized agent, the department shall immediately provide a dated receipt. In all other cases, the department shall immediately mail a dated receipt to the applicant.

NEW SECTION

WAC 222-20-015 Multiyear permits. *(1) Where a watershed analysis has been completed for a WAU under WAC 222-22 a landowner(s) may apply for a five-year permit. The application for this permit must contain the proposed forest practices for the landowner over the five year period. The application must also identify if the proposed forest practices are within areas of resource sensitivity and, if so, what prescriptions will be used in these areas. Once the permit expires, a new application may not be applied for until the five-year review of the watershed analysis has been completed.

*(2) Where a landowner has submitted a road maintenance and abandonment plan that involves forest practices that are more than Class I activities that require an application or notification, that plan may be considered an application for a multiyear permit where the schedule for implementing the road maintenance and abandonment is longer than two years, but does not exceed five years. The forest practices such as replacement of culverts, reconstruction of roads and abandonment need to be in adequate detail to review for protection of public resources.

AMENDATORY SECTION (Amending WSR 87-23-036, filed 11/16/87, effective 1/1/88)

WAC 222-20-020 Application time limits. (1) A properly completed application shall be approved, conditioned or disapproved within 30 calendar days for Class III and Class IV forest practices, except:

(a) To the extent the department is prohibited from approving the application by the act.

(b) For "Class IV" applications when the department or the lead agency has determined that a detailed environmental statement must be made, the application must be approved, conditioned or disapproved within 60 days, unless the commissioner of public lands promulgates a formal order specifying a later date for completion of the detailed environmental statement and final action on the application. At least 10 days before promulgation of such an order extending the time, the applicant shall be given written notice that the department is requesting such extension; giving the reasons the process cannot be completed within such period; and stating that the applicant may comment in writing to the commissioner of public lands or obtain an informal conference with the department regarding the proposed extension.

(c) When they involve lands platted after January 1, 1960, or lands to be converted, the applicable time limit shall be no less than 14 business days from transmittal to the county unless the county has waived its right to object or has consented to approval of the application.

(2) **Unless the county** has waived its rights under the act or consents to approval, the department shall not approve an application involving lands platted after January 1, 1960, in the process of being platted or proposed to be converted to another use until at least 14 business days from the date of transmittal to the county.

(3) **Where a notification** is submitted for operations which the department determines involve Class III or IV forest practices, the department shall issue a stop work order or take other appropriate action. If the operations were otherwise in compliance with the act and forest practices regulations, no penalty should be imposed for those operations which occurred prior to the enforcement action: *Provided*, That no damage to a public resource resulted from such operations, and the operations commenced more than 5 days from receipt by the department of the notification.

(4) **If the department** fails to approve or disapprove an application or any portion thereof within the applicable time limit, the application shall be deemed approved and the operation may commence: *Provided*, That this provision shall not apply where:

(a) The county objects and the application involves lands platted after January 1, 1960, or lands to be converted where the county's right of objection is 14 business days which may be longer than the approval time limit.

(b) The department is prohibited from approving the application by the act.

(c) Compliance with the State Environmental Policy Act requires additional time.

(5) **If seasonal field** conditions prevent the department from being able to properly evaluate the application, the department may disapprove the application until field conditions allow for an on-site review.

***(6) Multiyear permits will be approved, conditioned or disapproved within 60 days of receiving a complete application.**

AMENDATORY SECTION (Amending Order 263, filed 6/16/76)

WAC 222-20-070 Emergency forest practices plan. Prior to this exemption an operational plan identifying expectations for general practices must be in place. Once agreed upon ((No)) no prior notification or application shall be required for emergency forest practices necessitated by and commenced during or immediately after fire, flood, wind-storm, earthquake, structural failure or other catastrophic event. Within 48 hours after commencement of such practice, the operator shall submit an application or notification to the department with an explanation why emergency action was necessary. Such emergency forest practices are subject to these regulations: The general practices shall identify how the operator will take reasonable action to minimize damage to forest lands, timber or public resources from the direct or indirect effects of the catastrophic event and: Provided further, The operator shall comply with any requirements of a notice to comply or stop work order as if conducted pursuant to an approved application. This plan will be included in the road maintenance and abandonment plan and updated on an annual basis at the request of the department.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 94-01-134, filed 12/20/93, effective 1/1/94)

WAC 222-22-010 Policy. *(1) Public resources may be adversely affected by the interaction of two or more forest practices. The purpose of this rule is to address these cumulative effects of forest practices on the public resources of fish, water, including nonfish biota and capital improvements of the state or its political subdivisions. The long-term objective of this rule is to protect and restore these public resources and the productive capacity of fish habitat adversely affected by forest practices while maintaining a viable forest products industry. The board intends that this be accomplished through prescriptions designed to protect and ((allow the recovery of)) recover fish, water, and capital improvements of the state or its political subdivisions, through enforcement against noncompliance of the forest practice rules in this Title 222 WAC, and through ((voluntary)) mitigation measures. This system also ((allows for)) in some cases requires monitoring, subsequent watershed analysis, and adaptive management.

*(2) Adaptive management in a watershed analysis process requires advances in technology and cooperation among resource managers. The board finds that it is appropriate to promulgate rules to address certain cumulative effects by means of the watershed analysis system, while recognizing the pioneering nature of this system and the need to monitor its success in predicting and preventing adverse change to fish, water, and capital improvements of the state and its political subdivisions.

*(3) Many factors other than forest practices can have a significant effect on the condition of fish, water, and capital improvements of the state or its political subdivisions. Non-forest practice contributions to cumulative effects should be addressed by the appropriate jurisdictional authorities. When a watershed analysis identifies a potential adverse effect on fish, water, and capital improvements of the state or its political subdivisions from activities that are not regulated under chapter 76.09 RCW, the department should notify any governmental agency or Indian tribe having jurisdiction over those activities.

*(4) The rules in this chapter set forth a system for identifying the probability of change and the likelihood of this change adversely affecting specific characteristics of fish, water, and capital improvements of the state or its political subdivisions, and for using forest management prescriptions to avoid or minimize significant adverse effects from forest practices. The rules in this chapter are in addition to, and do not take the place of, the other forest practices rules in this Title 222 WAC.

*(5) These rules are intended to be applied and should be construed in such a manner as to minimize the delay associated with the review of individual forest practice applications and notifications by increasing the predictability of the process and the appropriate management response.

AMENDATORY SECTION (Amending WSR 94-01-134, filed 12/20/93, effective 1/1/94)

WAC 222-22-030 Qualification of watershed resource analysts, specialists, and field managers. *(1) The department shall set the minimum qualifications for analysts participating in level 1 assessments conducted under WAC 222-22-050, for specialists participating in level 2 assessments conducted under WAC 222-22-060, and for field managers participating in recommendation of prescriptions under WAC 222-22-070. The minimum qualifications shall be specific for the disciplines needed to participate in level 1 and level 2 assessments and in the recommendations of prescriptions, and shall include, at a minimum, formal education in the relevant discipline and field experience. Minimum qualifications for analysts participating in level 2 assessments should typically include a graduate degree in the relevant discipline.

*(2) The department shall coordinate with relevant state and federal agencies, affected Indian tribes, forest land owners, local government entities, and the public to seek and utilize available qualified expertise to participate in watershed analysis.

*(3) Qualified analysts, specialists, and field managers shall, while and only for the purpose of conducting a watershed analysis or monitoring in a WAU, be duly authorized representatives of the department for the purposes of RCW 76.09.150 making watershed analysis a public process.

*(4) An individual may qualify in more than one science or management skill. Qualification under subsection (1) of this section shall be effective for 5 years. When a qualification expires, a person requesting requalification shall meet the criteria in effect at the time of requalification.

*(5) The department shall provide and coordinate training for, maintain a register of, and monitor the performance of qualified analysts, specialists, and field managers by region. The department shall disqualify analysts, specialists, and field managers who fail to meet the levels of performance required by the qualification standards.

NEW SECTION

WAC 222-22-035 Watershed screening. The department or a landowner that owns ten percent of the nonfederal forest land in a WAU will screen each WAU to determine if watershed analysis is required and whether a level 1 assessment or level 2 assessment is required. The screen will be developed in consultation with TFW, with objective of determining which WAUs may require additional environmental protection where the standard rules are not adequate to protect public resources.

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-22-040 Watershed prioritization. (1) The department shall determine, by region, the order in which it will analyze WAUs that require watershed analysis (WAC 222-22-035). The department shall cooperate with the departments of ecology, fish and wildlife, affected Indian tribes,

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forest land owners, and the public in setting priorities. In setting priorities or reprioritizing WAUs, the department shall consider the availability of participation and assistance that may be provided by affected Indian tribes and local government entities.

***(2)** Except as set forth in subsection (3) of this section, the department shall undertake a watershed analysis on each WAU, in the order established under subsection (1) of this section.

***(3)** The owner or owners of ten percent or more of the nonfederal forest land acreage in a WAU may notify the department in writing that the owner or owners intend to conduct a level 1 assessment, level 2 assessment, or both, and the prescription recommendation process on the WAU under this chapter at their own expense. The notice shall identify the teams proposed to conduct the watershed analysis, which shall be comprised of individuals qualified by the department pursuant to WAC 222-22-030. The department shall promptly notify any owner or owners sending notice under this subsection if any member of the designated teams is not so qualified. Within 30 days of delivering a notice to the department under this subsection, the forest land owner or owners shall begin the level 1 assessment under WAC 222-22-050 or, at its option, the level 2 assessment under WAC 222-22-060. An approved forest land owner team shall, while and only for the purposes of conducting a watershed analysis in a WAU, be a duly authorized representative of the department for the purposes of RCW 76.09.150. The board encourages forest land owners conducting assessments under this chapter to include available, qualified expertise from state and federal agencies, affected Indian tribes, forest land owners, local government entities, and the public.

***(4)** Before beginning an analysis in a WAU, the department or the forest land owner conducting the analysis shall provide reasonable notice, including notice by regular United States mail where names and addresses have been provided to the department, to all forest land owners in the WAU, and to affected Indian tribes. The department or the forest land owner shall provide reasonable notice to the public and to state, federal, and local government entities, by, among other things, posting the notice conspicuously in the office of the departmental region containing the WAU. The notice shall be in a form designated by the department and give notice that an analysis is being conducted, by whose team, the time period of the analysis, and the dates and locations in which the draft analysis will be available for review and comment.

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-22-050 Level 1 watershed resource assessment. ***(1)** To begin a watershed resource analysis on a WAU, the department shall assemble a level 1 assessment team consisting of analysts qualified under WAC 222-22-030(1). A forest land owner or owners acting under WAC 222-22-040(3) may assemble a level 1 assessment team consisting of analysts qualified under WAC 222-22-030(1) or, at its option, may begin the analysis under WAC 222-22-060. Each level 1 team shall include persons qualified in the disci-

plines indicated as necessary in the methodology, and should generally include persons qualified in:

- (a) Forestry;
- (b) Forest hydrology;
- (c) Forest soil science or geology;
- (d) Fisheries science; and
- (e) Geomorphology.

Any owner, and any cooperating group of owners, of ten percent or more of the nonfederal forest land acreage in the WAU and any affected Indian tribe shall be entitled to include one qualified individual to participate on the team at its own expense.

***(2)** The level 1 team shall perform an inventory of the WAU utilizing the methodology, indices of resource condition, and checklists set forth in the manual in accordance with the following:

(a) The team shall survey the WAU for fish, water, and capital improvements of the state or its political subdivisions and shall display their location on a map of the WAU. The team shall determine the current condition of the resource characteristics of these resources, shall classify their condition as "good," "fair," or "poor," and shall display this information on the map of the WAU. The criteria used to determine current resource conditions shall include indices of resource condition, in addition to such other criteria as may be included in the manual. The indices will include two levels, which will distinguish between good, fair, and poor conditions.

(b) The team shall assess the likelihood that identified watershed processes in a given physical location will be adversely changed by one forest practice or by cumulative effects and that, as a result, a material amount of water, wood, sediment, or energy (e.g., affecting temperature) will be delivered to fish, water, or capital improvements of the state or its political subdivisions. (This process is referred to in this chapter as "adverse change and deliverability.") (For example, the team will address the likelihood that road construction will result in mass wasting and a slide that will in turn reach a stream.) The team shall rate this likelihood of adverse change and deliverability as "high," "medium," "low," or "indeterminate." Those likelihoods rated high, medium, or indeterminate shall be displayed on the map of the WAU.

(c) For each instance of high, medium, or indeterminate likelihood of adverse change and deliverability identified under (b) of this subsection, the team shall assess the vulnerability of potentially affected resource characteristics. Criteria for resource vulnerability shall include indices of resource condition as described in (a) of this subsection and quantitative means to assess the likelihood of material adverse effects to resource characteristics caused by forest practices. (For example, the team will assess the potential damage that increased sediment caused by a slide reaching a stream will cause to salmon spawning habitat that is already in fair or poor condition.) The team shall rate this vulnerability "high," "medium," "low," or "indeterminate" and shall display those vulnerabilities on the map of the WAU. If there are no other criteria in the manual to assess vulnerability at the time of the assessment, current resource condition shall be used, with good condition equivalent to low vulnerability, fair condition

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equivalent to medium vulnerability, and poor condition equivalent to high vulnerability.

(d) The team shall identify as areas of resource sensitivity, as provided in table 1 of this section, the locations in which a management response is required under WAC 222-22-070(3) because, as a result of one forest practice or of cumulative effects, there is a combination of a high, medium, or indeterminate likelihood of adverse change and deliverability under (b) of this subsection and a low, medium, high, or indeterminate vulnerability of resource characteristics under (c) of this subsection:

Table 1

Areas of Resource Sensitivity and Management Response

Likelihood of Adverse Change and Deliverability

	Low	Medium	High
Low	Standard rules	Standard rules	Response: Prevent or avoid
Medium	Standard rules	Response: Minimize	Response: Prevent or avoid
High	Standard rules	Response: Prevent or avoid	Response: Prevent or avoid

The team shall display the areas of resource sensitivity on the map of the WAU.

(e) The decision criteria used to determine low, medium, and high likelihood of adverse change and deliverability shall be as set forth in the manual. A low designation generally means there is minimal likelihood that there will be adverse change and deliverability. A medium designation generally means there is a significant likelihood that there will be adverse change and deliverability. A high designation generally means that adverse change and deliverability is more likely than not with a reasonable degree of confidence. Any areas identified as indeterminate in the level 1 assessment shall be classified for the purposes of the level 1 assessment as medium until a level 2 assessment is done on the WAU under WAC 222-22-060, during which the uncertainties shall be resolved.

(f) The team shall prepare a causal mechanism report regarding the relationships of each process identified in (b) and (c) of this subsection. The report shall demonstrate that the team's determinations were made in accordance with the manual. If, in the course of conducting a level 1 assessment, the team identifies areas in which voluntary corrective action will significantly reduce the likelihood of material, adverse effects to the condition of a resource characteristic, the team shall include this information in the report, and the department shall convey this information to the applicable land owner.

*(3) ((Within 21 days of mailing notice under WAC 222-22-040(4), the)) The level 1 team shall submit to the department its draft level 1 assessment, which shall consist of the

map of the WAU marked as set forth in this section and the causal mechanism report proposed under subsection (2)(f) of this section. If the level 1 team is unable to agree as to one or more resource sensitivities or potential resource sensitivities, or the causal mechanism report, alternative designations and an explanation therefor shall be included in the draft assessment. Where the draft level 1 assessment delivered to the department contains alternative designations, the department shall within 21 days of the receipt of the draft level 1 assessment make its best determination and approve that option which it concludes most accurately reflects the proper application of the methodologies, indices of resource condition, and checklists set forth in the manual.

*(4) If the level 1 assessment contains any areas in which the likelihood of adverse change and deliverability or resource vulnerability are identified as indeterminate under this section or if the level 1 methodology recommends it, the department shall assemble a level 2 assessment team under WAC 222-22-060 to resolve the uncertainties in the assessment, unless a forest land owner acting under WAC 222-22-040(3) has conducted a level 2 assessment on the WAU.

*(5) Pending the completion of the level 2 assessment, if any, on the WAU, the department shall select interim prescriptions using the process and standards described in WAC 222-22-070 (1), (2), and (3) and 222-22-080(3) and shall apply them to applications and notifications as provided in WAC 222-22-090 (1) and (2). Before submitting recommended interim prescriptions to the department, the field managers' team under WAC 222-22-070(1) shall review the recommended prescriptions with available representatives of the jurisdictional management authorities of the fish, water, and capital improvements of the state or its political subdivisions in the WAU, including, but not limited to, the departments of fish and wildlife, ecology, and affected Indian tribes.

AMENDATORY SECTION (Amending WSR 94-01-134, filed 12/20/93, effective 1/1/94)

WAC 222-22-060 Level 2 watershed resource assessment. *(1) The department, or forest land owner acting under WAC 222-22-040(3), may assemble a level 2 assessment team either, in the case of a forest land owner, to begin a watershed analysis or to review the level 1 assessment on a WAU. The level 2 team shall consist of specialists qualified under WAC 222-22-030(1). Each level 2 team shall include persons qualified in the disciplines indicated as necessary in the methodology, and should generally include persons qualified in:

- (a) Forestry;
- (b) Forest hydrology;
- (c) Forest soil science or geology;
- (d) Fisheries science; and
- (e) Geomorphology.

Any owner, and any cooperating group of owners, of ten percent or more of the nonfederal forest land acreage in the WAU and any affected Indian tribe shall be entitled to designate one qualified member of the team at its own expense.

*(2) The level 2 team shall perform an assessment of the WAU utilizing the methodology, indices of resource condi-

tion, and checklist set forth in the manual in accordance with the following:

(a) If a level 1 assessment has not been conducted under WAC 222-22-050, the assessment team shall complete the tasks required under WAC 222-22-050(2), except that the level 2 team shall not rate any likelihood of adverse change and deliverability or resource vulnerability as indeterminate.

(b) If the level 2 team has been assembled to review a level 1 assessment, the level 2 team shall, notwithstanding its optional review of all or part of the level 1 assessment, review each likelihood of adverse change and deliverability and resource vulnerability rated as indeterminate and shall revise each indeterminate rating to low, medium, or high and shall revise the map of the WAU accordingly.

~~*(3) ((Within 60 days of mailing notice under WAC 222-22-040(4) where a watershed analysis begins with a level 2 assessment or within 60 days of beginning a level 2 assessment after completion of a level 1 assessment, the)) The~~ level 2 team shall submit to the department its draft level 2 assessment, which shall consist of the map of the WAU and the causal mechanism report.

(4) The level 2 team shall endeavor to produce a consensus report. If the level 2 team is unable to agree as to one or more areas of resource sensitivity or the causal mechanism report, alternative designations and an explanation therefor shall be included in the draft assessment. Where the draft level 2 assessment delivered to the department contains alternative designations or reports, the department shall within 30 days of the receipt of the draft level 2 assessment make its best determination and approve that option which it concludes most accurately reflects the proper application of the methodologies, indices of resource condition, and checklists set forth in the manual.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 222-22-065 Review of assessments. After the assessment is complete, a review of the assessment will be coordinated by the department, to ascertain if the assessment met the intent of the manual. If the assessment is not adequate, then the issues must be resolved before the field managers team begins.

AMENDATORY SECTION (Amending WSR 94-01-134, filed 12/20/93, effective 1/1/94)

WAC 222-22-070 Prescription recommendation. *(1) For each WAU for which a watershed analysis is undertaken, the department, or forest land owner acting under WAC 222-22-040(3), shall assemble a team of field managers qualified under WAC 222-22-030(1). The team shall include persons qualified in the disciplines indicated as necessary in the methodology, and shall generally include persons qualified in:

- (a) Forest resource management;
- (b) Forest harvest and road systems engineering;
- (c) Forest hydrology; and

(d) Fisheries science or management.

Any owner, and any cooperating group of owners, of ten percent or more of the nonfederal forest land acreage in the WAU and any affected Indian tribe shall be entitled to include one qualified individual to participate on the team at its own expense.

(2) Each forest land owner in a WAU shall have the right to submit to the department or the forest land owner conducting the watershed analysis prescriptions for areas of resource sensitivity on its land. If these prescriptions are received within the time period described in subsection (4) of this section, they shall be considered for inclusion in the watershed analysis.

(3) For each identified area of resource sensitivity, the field managers' team shall, in consultation with the level 1 and level 2 teams, if any, select and recommend to the department prescriptions. These prescriptions shall be reasonably designed to minimize, or to prevent or avoid, as set forth in table 1 in WAC 222-22-050 (2)(d), the likelihood of adverse change and deliverability that has the potential to cause a material, adverse effect to resource characteristics in accordance with the following:

(a) The prescriptions shall be designed to provide forest land owners and operators with as much flexibility as is reasonably possible while addressing the area of resource sensitivity. The prescriptions should, where appropriate, include, but not be limited to, plans for road abandonment, orphaned roads, and road maintenance and plans for applying prescriptions to recognized land features identified in the WAU as areas of resource sensitivity but not fully mapped;

(b) Each set of prescriptions shall provide for an option for an alternate plan under WAC 222-12-040, which the applicant shows meets or exceeds the protection provided by the other prescriptions approved for a given area of resource sensitivity; and

(c) The regulation of forest practices and cumulative effects under this chapter shall not require mitigation for activities or events not regulated under chapter 76.09 RCW. Any hazardous condition subject to forest practices identified in a watershed analysis requiring corrective action shall be referred to the department for consideration under RCW 76.09.300 et seq.

~~*(4) The field managers' team shall submit the recommended prescriptions to the department ((within 30 days of the submission to the department of the level 2 assessment under WAC 222-22-060 or within 21 days of the submission to the department of the level 1 assessment under WAC 222-22-050)). If the field managers' team cannot reach consensus recommendations within 30 days the prescriptions and any alternatives will be forwarded to the department. The department will then have 30 days to develop the prescriptions.~~

NEW SECTION

WAC 222-22-075 Monitoring. To assure that prescriptions will be effective, a monitoring plan shall be developed to identify whether the prescriptions are effectively minimizing, preventing or avoiding, as set forth in table 1 in WAC 222-22-050 (2)(d), the likelihood of adverse change and deliverability that has the potential to cause a material,

adverse effect to resource characteristics. The information collected in this plan will be used to evaluate the watershed analysis under WAC 222-22-090.

NEW SECTION

WAC 222-22-076 Restoration. As prescriptions are developed, restoration opportunities will also be identified and used to develop actions that can be prescribed for short-term issues (i.e., such as large woody debris placement to provide short-term function until recruitable wood is available).

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-22-090 Use and review of watershed analysis. (1) Where a watershed analysis has been completed for a WAU under this chapter:

(a) Any landowner within the WAU may apply for five year permit to carry out forest practices according to the watershed analysis prescriptions. Upon completion of the five-year review of the assessment and prescriptions under WAC 222-22-090 (4)(a), landowner may apply for a renewal of the permit.

(b) ((Forest)) Nonfive year forest practices applications and notifications submitted to the department shall indicate whether an area of resource sensitivity will be affected and, if so, which prescription the operator, timber owner, or forest land owner shall use in conducting the forest practice in the area of resource sensitivity;

((b))) (c) The department shall assist operators, timber owners, and forest land owners in obtaining governmental permits required for the prescription (see WAC 222-50-020 and 222-50-030);

((e))) (d) The department shall confirm that the prescription selected under (a) of this subsection was one of the prescriptions approved for the area of resource sensitivity under WAC 222-22-080 and shall require the use of the prescription; and

((d))) (e) The department shall not further condition forest practice applications and notifications in an area of resource sensitivity in a WAU where the applicant will use a prescription contained in the watershed analysis nor shall the department further condition forest practice applications and notifications outside an area of resource sensitivity in a WAU, except for reasons other than the watershed processes and fish, water, and capital improvements of the state or its political subdivisions analyzed in the watershed analysis in the WAU, and except to correct mapping errors, misidentification of soils, landforms, vegetation, or stream features, or other similar factual errors.

(2) Pending completion of a watershed analysis for a WAU, the department shall process forest practices notifications and applications in accordance with the other chapters of this title, except that applications and notifications received for forest practices on a WAU after the date notice is mailed under WAC 222-22-040(4) commencing a watershed analysis on the WAU shall be conditioned to require compliance with interim, draft, and final prescriptions, as available.

Processing and approval of applications and notifications shall not be delayed by reason of review, approval, or appeal of a watershed analysis.

*(3) The board encourages cooperative and voluntary monitoring. Evaluation of resource conditions may be conducted by qualified specialists, analysts, and field managers as determined under WAC 222-22-030. Subsequent watershed analysis and management strategies in response to areas where recovery is not occurring shall be conducted in accordance with this chapter.

*(4) Where the condition of resource characteristics in a WAU are fair or poor, the department shall evaluate the effectiveness of the prescriptions applied under this chapter to the WAU in providing for the protection and recovery of the resource characteristic. If the department finds that the prescriptions are not providing for such protection and recovery over a period of 3 years, the department shall repeat the watershed analysis in the WAU. Aside from the foregoing, once a watershed analysis is completed on a WAU, it shall be revised in whole or in part upon the earliest of the following to occur:

(a) Five years after the date the watershed analysis is final, if necessary;

(b) The occurrence of a natural disaster having a material adverse effect on the resource characteristics of the WAU;

(c) Deterioration in the condition of a resource characteristic in the WAU measured over a 12-month period or no improvement in a resource characteristic in fair or poor condition in the WAU measured over a 12-month period unless the department determines, in cooperation with the departments of ecology, fish and wildlife, affected Indian tribes, forest land owners, and the public, that a longer period is reasonably necessary to allow the prescriptions selected to produce improvement; or

(d) The request of an owner of forest land in the WAU which wishes to conduct a watershed analysis at its own expense.

Revision of an approved watershed analysis shall be conducted in accordance with the processes, methods, and standards set forth in this chapter, except that the revised watershed analysis shall be conducted only on the areas affected in the case of revisions under (b) or (c) of this subsection, and may be conducted on areas smaller than the entire WAU in the case of revisions under (a) and (d) of this subsection. The areas on which the watershed analysis revision is to be conducted shall be determined by the department and clearly delineated on a map before beginning the assessment revision. Forest practices shall be conditioned under the current watershed analysis pending the completion of any revisions.

AMENDATORY SECTION (Amending WSR 94-01-134, filed 12/20/93, effective 1/1/94)

WAC 222-24-010 Policy. *(1) A well designed, located, constructed, and maintained system of forest roads is essential to forest management and protection of the public resources. Riparian areas contain some of the more productive conditions for growing timber, are heavily used by wildlife and provide essential habitat for fish and wildlife and essential functions in the protection of water quality. Wetland

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areas serve several significant functions in addition to timber production: Providing fish and wildlife habitat, protecting water quality, moderating and preserving water quantity. Wetlands may also contain unique or rare ecological systems.

***(2)** All road and landing construction within wetlands shall be conducted so that choices are made in the following descending order of preference in order to assure that there is no net loss of wetland functions:

(a) Avoid impacts by selecting the least environmentally damaging landing location, road location and road length; or

(b) Minimize impacts by such things as reducing the sub-grade width, fill acreage and spoil areas; or

(c) Restore affected areas by removing temporary fills or road sections upon the completion of the project; or

(d) Reduce or eliminate impacts over time by preserving or maintaining areas; or

(e) Replace affected areas by creating new wetlands or enhancing existing wetlands at a minimum of a 2:1 ratio.

***(3)** An accurate delineation of wetland boundaries shall not be required under this section except where necessary to determine acreage of road or landing construction which fills or drains more than 0.5 acre of a wetland. Landowners are encouraged to voluntarily increase wetland acreage and functions over the long-term.

***(4)** Extra protection is required during road construction and maintenance to protect these resources and timber growing potential. Landowners and fisheries and wildlife managers are encouraged to cooperate to develop road management and abandonment plans. Landowners are further encouraged to cooperate in sharing roads to minimize road mileage and avoid duplicative road construction.

***(5)** This section covers the location, design, construction, maintenance and abandonment of forest roads, bridges, stream crossings, quarries, borrow pits, and disposal sites used for forest road construction and is intended to assist landowners in proper road planning, construction and maintenance so as to protect public resources.

(Note: Other laws and regulations and/or permit requirements may apply. See chapter 222-50 WAC.)

AMENDATORY SECTION (Amending WSR 92-15-011, filed 7/2/92, effective 8/2/92)

WAC 222-24-020 Road location and design. The board manual outlines the best management practices for locating and designing a road.

(1) ((Fit the)) Design road systems to the topography so that a minimum of alterations to the natural features will occur.

***(2) Roads are not to be constructed in bogs.**

***(3) All roads should be outsloped with appropriate surface drainage or insloped with a drainage management plan addressing sedimentation delivery with adequate cross drains, ditches, drivable dips, relief culverts, water bars, diversion ditches, or other such structures demonstrated to be equally effective.**

***(4) Minimize roads** along or within narrow canyons, riparian management zones, wetlands and wetland management zones.

(a) ((Except where crossings are necessary, r)) Roads shall not be located within natural drainage channels and riparian management zones when there would be substantial loss or damage to wildlife habitat unless the department has determined that alternatives will cause greater damage to public resources.

(b) Roads shall not be located in wetlands when there would be substantial loss or damage to wetland functions or acreage unless the department has determined that alternatives will cause greater damage to public resources.

(c) Approximate determination of wetland boundaries shall be required for the purpose of avoidance during design and construction of roads. ((Landowners should attempt to minimize road length concurrently with the attempt to avoid wetlands.)) Delineation shall be required to determine the length of road ((constructed within a)) affecting wetland function in order to determine acreage when replacement by substitution or enhancement of a wetland is required. The requirement for accurate delineation shall be limited to the area of the wetland proposed to be filled.

((*(3) Minimize the number of stream crossings.))

((*(4) Whenever practical, cross streams at right angles to the main channel.))

***(5) Permanent stream crossing shall be minimized based on sub-basin road sediment budgets. Stream crossings shall minimize alterations to natural features. Culverts located in typed waters shall be designed to prevent sediment delivery.**

(6) Avoid duplicative roads by keeping the total amount of construction to a minimum. Use existing roads whenever practical and avoid isolating patches of timber which, when removed, may require unnecessary road construction.

(7) Avoid grade dips on approaches over bridges and culverts. If grade dips are necessary, minimize the impact by outsloping or constructing maintainable drainage dips to route water off the road surface and onto the forest floor.

((*(6))) *(8) ((Where feasible,)) ((e)) Do not locate roads on ((excessively)) steep or unstable slopes or ((known)) slide prone areas ((as determined by the department)). The department shall determine whether slopes are unstable using available soils information, or from evidence of geologically recent slumps or slides ((or where the natural slope exceeds the angle of repose for the particular soil types present)), or by the presence of potentially unstable landforms such as bedrock hollows, convergent headwalls, inner gorges, or other steep slopes, or where springs or seeps may indicate unstable conditions are present in or above the construction site. Location of roads in such areas may be considered Class IV-Special forest practices under WAC 222-16-050(d).

((Essential r)) Road construction ((will be accomplished)) may be permitted by end hauling, over hauling, or other special road construction techniques unless the department determines there is potential for damage to public resources under WAC 222-16-050 (1)(e).

(9) Design or construct cut and fill slopes to the normal angle of repose for the materials involved, or at a lesser angle whenever practical.

(10) Relief drainage structures installed on forest roads shall meet the following minimum specifications:

(a) Outslope with armored drivable water dips to control surface runoff.

(b) Insloped roads and ditches require relief drainage structures—

(i) Culverts will be at least 18 inches in diameter or equivalent with relief devices not to exceed 300 feet spacing unless otherwise stated in a drainage management plan.

(ii) Be installed sloping toward the outside edge of the road at a minimum gradient of 3 percent.

(iii) Settlement ponds and relief drainage structures are required within 80 feet of typed waters with the potential road sediment delivery.

(11) **Ditch diversion.** Where roadside ditches slope toward a Type S, F, or N water, or Type A or B Wetland for more than 300 feet and otherwise would discharge into the stream or wetland, divert the ditchwater onto the forest floor by relief culvert or other means at the first practical point.

(12) **Filling or draining** more than 0.5 acre of a wetland requires replacement by substitution or enhancement of the lost wetland functions at a minimum of a 2:1 ratio. See the Board Manual. Replacement or substitution should be of the same type and in the same general location.

*(13) Road surface sediments shall be minimized by utilizing restricted haul periods or alternative drainage management strategies. A haul route drainage management plan minimizing sediment is required for partial or nonrestricted haul.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-24-030 Road construction. The board manual contains best management practices for constructing roads.

(1) **Right of way timber.** Merchantable right of way timber shall be removed or decked in suitable locations where the decks will not be covered by fill material or act as support for the fill or embankment.

*(2) **Debris burial.** ((a)) In permanent road construction, do not bury:

((i)) (a) Loose stumps, logs or chunks containing more than 5 cubic feet in the load-bearing portion of the road, except as puncheon across wetlands or for culvert protection.

((ii)) (b) Any significant amount of organic debris within the top 2 feet of the load-bearing portion of the road, except as puncheon across wetlands or for culvert protection.

((iii)) (c) Excessive accumulation of debris or slash in any part of the load-bearing portion of the road fill, except as puncheon across wetlands or for culvert protection.

((b)) In the cases where temporary roads are being constructed across known areas of unstable soils and where possible construction failure would directly impact waters, the requirements in (a), (i), (ii) and (iii) of this subsection shall apply. A temporary road is a roadway which has been opened for the purpose of the forest practice operation in question, and thereafter will be an inactive or abandoned road.))

(3) **Compact fills.** During road construction, fills or embankments shall be built up by layering. Each layer shall be compacted by operating the tractor or other construction equipment over the entire surface of the layer. Chemical compacting agents may be used in accordance with WAC 222-38-020.

*(4) **Stabilize soils.** ((When soil, exposed by road construction, appears to be unstable or erodible and is so located that slides, slips, slumps, or sediment may reasonably be expected to enter Type 1, 2, 3 or 4 Water and thereby cause damage to a public resource, then such exposed soil areas)) Soils exposed by road construction shall be seeded with grass, clover, or other ground cover, or be treated by erosion control measures ((acceptable to the department)) in the first growing season. Avoid introduction of nonnative plant species, as listed in the board manual, to wetlands and wetland management zones.

*(5) **Channel clearance.** Clear stream channels and ditches of all debris and slash generated during operations prior to the removal of equipment from the vicinity, or the winter season, whichever is first. Refer to the board manual regarding guidelines for removal of debris and slash from channels and ditches.

*(6) **Drainage.**

(a) All required outsloping ditches, ((culverts)), stream crossings, cross drains, drainage dips, water bars, and diversion ditches shall be installed concurrently with the construction of the roadway.

(b) Uncompleted road construction to be left over the winter season or other extended periods of time shall be drained by outsloping or cross draining. Water bars and/or dispersion ditches may also be used to minimize eroding of the construction area and stream siltation. Water movement within wetlands must be maintained.

*(7) **Moisture conditions.** Construction shall be accomplished when moisture and soil conditions are not likely to result in excessive erosion and/or soil movement, so as to avoid damage to public resources.

*(8) **End haul/sidecasts.** End haul or overhaul construction is required where significant amounts of sidecast material would rest below the ((50)) 100-year flood level of a Type ((1, 2, 3, or 4 Water)) S, F, or N water, within the boundary of a Type A or Type B Wetland or wetland management zones or where the department determines there is a potential for mass soil failure from overloading on unstable slopes or from erosion of side cast material causing damage to the public resources.

*(9) **Waste disposal.** When spoil, waste and/or other debris is generated during construction, this material shall be deposited or wasted in suitable areas or locations and be governed by the following:

(a) Spoil or other debris shall be deposited above the 50-year flood level of Type ((1, 2, 3, or 4 Waters)) S, F, or N waters or in other locations so as to prevent damage to public resources. The material shall be stabilized by erosion control measures as necessary to prevent the material from entering the waters.

(b) All spoils shall be located outside of Type A and Type B Wetlands and their wetland management zones.

PROPOSED

Spoils shall not be located within the boundaries of forested wetlands without written approval of the department and unless a less environmentally damaging location is unavailable. No spoil area greater than 0.5 acre in size shall be allowed within wetlands.

(10) Disturbance avoidance for northern spotted owls. Road construction, operation of heavy equipment and blasting within a SOSEA boundary shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1 and August 31, provided that, this restriction shall not apply if:

(a) The landowner demonstrates that the owls are not actively nesting during the current nesting season; or

(b) The forest practice is operating in compliance with a plan or agreement developed for the protection of the northern spotted owl under WAC 222-16-080 (6)(a), (e), or (f).

(11) Disturbance avoidance for marbled murrelets.

(a) Road construction and operation of heavy equipment shall not be allowed within 0.25 mile of an occupied marbled murrelet site during the daily peak activity periods within the critical nesting season; and

(b) Blasting shall not be allowed within 0.25 mile of an occupied marbled murrelet site during the critical nesting season.

(c) Provided that, these restrictions shall not apply if the forest practice is operating in compliance with a plan or agreement developed for the protection of the marbled murrelet under WAC 222-16-080 (6)(a) or (c).

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 92-15-011, filed 7/2/92, effective 8/2/92)

WAC 222-24-035 Landing location and construction.

***(1) Landing location:**

Locate landings to prevent damage to public resources. Avoid excessive excavation and filling. Minimize placement and size of landings within wetlands. Landings shall not be located in Type A or B Wetlands or their wetland management zones.

(2) Landing construction.

(a) Landings requiring sidecast or fill shall be no larger than reasonably necessary for safe operation of the equipment expected to be used.

(b) Where the average general slopes exceed 65 percent, fill material used in construction of landings shall be free from loose stumps and excessive accumulations of slash and shall be mechanically compacted where necessary and practical in layers by tractor to prevent soil erosion and mass soil movement. Chemical compacting agents may be used in accordance with WAC 222-38-020.

*(c) Truck roads, skid trails, and fire trails shall be out-sloped or cross drained uphill of landings and the water diverted onto the forest floor away from the toe of any landing fill.

*(d) Landings shall be sloped to minimize accumulation of water on the landing.

*(e) Excavation material shall not be sidecast where there is high potential for material to enter Type A or B Wetlands or wetland management zones or below the ((ordinary high water mark)) bankfull width of any stream or the ((50)) 100-year flood level of Type ((1, 2, 3, or 4 Water)) S. F. or N water.

*(f) All spoils shall be located outside of Type A and Type B Wetlands and their wetland management zones. Spoils shall not be located within the boundaries of forested wetlands without written approval of the department and unless a less environmentally damaging location is unavailable. No spoil area greater than 0.5 acre in size shall be allowed within wetlands.

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-24-040 Water crossing structures. *(1) ((Bridge construction.)) All typed waters.

(a) Bridges are required for new or constructed crossings of any ((Type 1 or 2 Waters)) waters regularly used for recreational boating.

((b) ((Permanent bridges shall not constrict clearly defined channels and shall be designed to pass the 50-year flood level or the road shall be constructed to provide erosion protection from the 50-year flood waters which exceed the water-carrying capacity of the drainage structure.))

((e))) One end of each new or reconstructed permanent log or wood bridge shall be tied or firmly anchored if any of the bridge structure is within 10 vertical feet of the ((50)) 100-year flood level.

((d) ((Excavation for bridges, placement of sills or abutments, and the placement of stringers or girders shall be accomplished from outside the ordinary high water mark of all waters, except when such operations are authorized by a hydraulic project approval.))

((e) ((Earth embankments constructed for use as bridge approaches shall be protected from erosion by high water. Some examples of protection are: Planted or seeded ground cover, bulkheads, rock riprap, or retaining walls.)))

((f) ((When earthen materials are used for bridge surfacing, curbs of sufficient size shall be installed to be above the surface material and prevent such surface material from falling into the stream bed.)))

*(2) **Type S or F waters:** In addition to applicable general provisions above, installation, maintenance, and removal of water crossing structures in or across the bankfull width of Type S and F waters are subject to hydraulic code rules WAC 222-110 and require a hydraulic project approval issued by the department of fish and wildlife.

*(3) **Type N waters - bridges:** In addition to applicable general provisions above, installation, maintenance, and removal of permanent bridges in or across the bankfull width of Type N waters are subject to the following provisions:

(a) Permanent bridges shall not constrict clearly defined channels and shall be designed to pass the 100-year flood, or the bridge, associated embankments and fills, and all potentially inundated areas, shall be provided sufficient erosion protection to withstand the 100-year flood.

(b) Excavation for and placement of the bridge foundation and superstructure shall be located and accomplished from outside the bankfull width. This requirement may be waived if it can be demonstrated that such activities may be conducted in such a manner as to prevent damage to public resources.

(c) Alteration or disturbance of the stream bank or bank vegetation shall be limited to that necessary to construct the project. All disturbed areas must be stabilized and restored according to the recommended schedule and procedures found in the board manual. This requirement may be modified or waived by the department if precluded by engineering or safety factors.

(d) Earthen embankments constructed for use as bridge approaches shall be provided sufficient erosion protection to withstand the 100-year flood.

(e) When earthen materials are used for bridge surfacing, curbs of sufficient size shall be installed to be above the surface material and prevent such surface material from falling into the stream bed.

*4) Type N waters-culverts: In addition to applicable general provisions above, installation, maintenance, and removal of permanent culverts in or across the bankfull width of Type N waters are subject to the following provisions:

((Culvert installation:))

((a) All permanent culverts ((installed in forest roads shall be of a size that is adequate to carry)) shall be designed to pass the ((50)) 100-year flood. ((or the road shall be constructed to provide erosion protection from the 50-year flood waters which exceed the water-carrying capacity of the drainage structure.)) The culvert, associated embankments and fills, and all potentially inundated areas shall provide sufficient erosion protection to withstand the 100-year flood. Refer to "Recommended culvert sizes" in the forest practices board manual for the size of permanent culverts recommended for use in forest roads. If the department determines that because of unstable slopes the culvert size shown on that table is inadequate to protect public resources, it may require culvert sizes in accordance with the nomograph (chart) contained in the forest practices board manual or with other generally accepted engineering principles.

((t))) (b) No permanent culverts shall be installed that are smaller than:

((i) 24 inches in diameter ((or the equivalent for anadromous fish streams or wetlands where anadromous fish are present)) for Type N perennial streams.

((ii) 18 inches or the equivalent for ((resident game fish streams)) Type N seasonal streams.

((iii) 18 inches or the equivalent for all other water or wetland crossings in western Washington.

((iv) 15 inches or the equivalent for all other water or wetland crossings in eastern Washington.))

((t))) (c) The alignment and slope of the culvert shall parallel the natural flow of the stream whenever possible.

((e) When fish life is present, construct the bottom of the culvert at or below the natural stream bed at the inlet and outlet.

((d) Terminate culverts on materials that will not readily erode, such as riprap, the original stream bed (if stable), or other suitable materials.

(e) If water is diverted from its natural channel, return this water to its natural stream bed via culvert, flume, spillway, or the equivalent.

(f) When flumes, downspouts, downfall culverts, etc., are used to protect fill slopes or to return water to its natural courses, the discharge point shall be protected from erosion by: (i) Reducing the velocity of the water, (ii) use of rock spillways, (iii) riprap, (iv) splash plates, or (v) other methods or structures demonstrated to be equally effective.))

(d) Culverts shall be designed and installed so that they will not cause scouring of the stream bed and erosion of the banks in the vicinity of the project.

(e) During installation of the culvert, all streamflow shall be diverted using a bypass flume or culvert, or by pumping the streamflow around the work area. This requirement may be waived if it can be demonstrated that less siltation and turbidity would be produced by installing the culvert in the flowing stream.

(f) Fill associated with culvert installation shall be provided sufficient erosion protection to withstand a 100-year flood.

(g) Alteration or disturbance of the stream bank or bank vegetation shall be limited to that necessary to construct the project. All disturbed areas must be stabilized and restored according to the recommended schedule and procedures found in the board manual. This requirement may be modified or waived by the department if precluded by engineering or safety factors.

((g))) (h) Stream beds shall be cleared for a distance of 50 feet upstream from the culvert inlet of such slash or debris that reasonably may be expected to plug the culvert.

((h))) (i) The entrance of all culverts should have adequate catch basins and headwalls to minimize the possibility of erosion or fill failure.

((*3) Culverts in anadromous fish streams: In addition to the requirements of subsection (2) of this section, in streams used by anadromous fish:

(a) Culverts shall be either open bottomed or have the bottom covered with gravel and installed at least 6 inches below the natural stream bed at the inlet and outlet.

(b) Closed bottom culverts shall not slope more than 1/2 percent; except as provided in (e) of this subsection; open bottom culverts shall not slope more than the natural slope of the stream bed.

(c) Where multiple culverts are used, one culvert shall be at least 6 inches lower than the other(s).

(d) Culverts shall be set to retain normal stream water depth throughout the culvert length. A downstream control may be required to create pooled water back into the culvert and to insure downstream stream bed stability.

(e) Closed bottom culverts, set at existing stream gradients between 1/2 percent and 3 percent slope shall be designed with baffles for water velocity control, or have an approved designed fishway.

(f) The department, after consultation with the department of fish and wildlife, shall impose any necessary limitations on the time of year in which such culverts may be installed to prevent interference with migration or spawning of anadromous fish.

PROPOSED

(g) Any of the requirements in (a) through (f) of this subsection may be superseded by a hydraulic project approval.)

((4)) **(5) Type N waters - Temporary water crossings.**

(a) Temporary bridges and culverts, ((adequate to carry the highest anticipated flow in lieu of carrying the 50-year flood,)) may be used:

(i) In the westside region if installed after June ((+)) 15 and removed by September 30 of the same year.

(ii) In the eastside region if installed after the spring runoff and removed prior to the snow buildup which could feed a heavy runoff.

(iii) At other times, when the department and applicant can agree to specific dates of installation and removal.

(b) Temporary bridges and culverts shall be designed to pass the flood expected to occur once in 100 years during the season of installation.

(c) Alteration or disturbance of the stream bank or bank vegetation shall be limited to that necessary to construct the project. All disturbed areas must be stabilized and restored according to the recommended schedule and procedures found in the Board Manual. This requirement may be modified or waived by the department if precluded by engineering or safety factors.

(d) During installation of a temporary culvert, all streamflow shall be diverted using a bypass flume or culvert, or by pumping the streamflow around the work area. This requirement may be waived if it can be demonstrated that less siltation and turbidity would be produced by installing the culvert in the flowing stream.

(e) Temporary bridges and culverts shall be promptly removed upon completion of use, and the approaches to the crossing shall be water barred and stabilized at the time of the crossing removal.

((e)) (f) Temporary wetland crossings shall be abandoned and restored based on a written plan approved by the department prior to construction.

((5)) **(6) Fords.** Properly prepared and maintained fords may be used in Type N waters during periods of low water providing a hydraulic permit is acquired.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-24-050 Road maintenance. *(1) Road maintenance, drainage management, and abandonment plan.

(a) The landowner when notified by the department shall submit a plan for road maintenance, drainage management, and/or abandonment for those drainages or road systems the department determines based on physical evidence to have a potential to damage public resources. Once notified the landowner must within 90 days submit to the department for review and approval, a plan for those drainages or road sys-

tems within the identified area. The plan must pay particular attention to those road segments that block fish passage or have the potential to deliver water or sediment to any type of water. The plan is subject to annual review and shall include:

(i) Ownership maps showing the road or road system;

(ii) Road status, whether active, inactive, orphan, abandoned or planned for abandonment;

(iii) Maintenance schedule ((and priorities for the year)) including storm maintenance, drainage management strategies and priorities which will consider the road proximity to water, and roads delivering to typed waters; and

(iv) Plan for further maintenance and reconstruction beyond the current year for ((repair of extensive damage)) bringing roads up to standards, preventing sedimentation, removing fish passage blockages and reducing hydrologic impacts. Restoring fish passage, reducing sediment, and reducing hydrologic impacts will be priorities considered in the maintenance schedule.

((2)(a) All landowners with 500 acres or more of ownership in areas not currently covered by an approved watershed analysis (see chapter 222-22 WAC), road maintenance plan, or other agreement where an acceptable road maintenance plan is part of the agreement, must submit a road maintenance plan for all roads in their ownership within 5 years of the effective date of this rule. The plan must meet the requirements outlined above in subsection (1) of this section. The plan must be submitted to the department with at least 20% of a landowner's ownership each year. Landowners will prioritize which plans will be submitted first based on whether a road system or drainage contains a listed water body or species; sensitive geology/soils or history of failure; level of use or restoration projects coincide in the same drainage; in this order of preference.

(b) Landowners hauling timber on active haul routes not covered under a department approved road maintenance and abandonment plan, an approved watershed analysis or other agreement in which a road maintenance and abandonment plan is part of the agreement must submit a drainage management plan with each application.

((4)) (c) ((The department will review the plan annually with the landowner to determine whether it will be effective and is being implemented.)) Landowners with less than 500 acres within the areas in a watershed administrative unit that has not undergone a watershed analysis under chapter 222-22 WAC must submit a road maintenance and abandonment plan along with the forest practice notification or application for proposed road or harvest activities. The plan must cover their entire ownership.

((4)) (d) The plan shall be submitted to the department region office on or before June 30, 1988, and each June 30th thereafter unless the department agrees that no further plans are necessary.

((4)) (e) Such plans shall also be reviewed with the departments of ecology, fish and wildlife, affected Indian tribes, and interested parties, any of whom may request the department to hold an informal conference with the landowner.

((4)) (f) The department will review the plan annually with the landowner, departments of ecology, and fish and wildlife.

affected Indian tribes and interested parties to determine whether it will be effective and is being implemented.

(g) An approved road maintenance and abandonment plan will be considered a multi-year permit for accomplishing those actions approved in the plan.

(h) Roads that are not in compliance with the approved plan may not be used without department approval.

(NOTE: The road maintenance and abandonment training manual and other materials made available by the department can be used for guidance in developing road maintenance and abandonment plans.)

*(2) **Active roads.** An active road is a forest road being actively used for hauling of logs, pulpwood, chips, or other major forest products or rock and other road building materials. To the extent necessary to prevent damage to public resources, the following maintenance shall be conducted on such roads:

(a) ((Culverts)) Outsloping and armored drivable dips shall be maintained.

(b) Stream crossings, cross drains and ditches shall be kept functional.

(c) Restricted haul will be required unless a road maintenance and abandonment plan is in place for the haul route.

((b)) (d) Road surface shall be maintained as necessary to minimize erosion of the surface and the subgrade.

((e)) (e) During and on completion of operations, road surface shall be crowned, outsloped, or water barred and berms removed from the outside edge except those intentionally constructed for protection of fills.

*(3) **Inactive roads.** An inactive road is a forest road on which commercial hauling is discontinued for 1 or more logging seasons, and the forest landowner desires continuation of access for fire control, forest management activities, Christmas tree growing operations, occasional or incidental use for minor forest products harvesting or similar activities on such inactive roads:

(a) Before the first winter rainy season following termination of active use, nonfunctional ditches and culverts shall be cleared, stream crossings and cross drains and the road surface shall be crowned, ((outsloped,)) water barred or otherwise left in a condition not conducive to accelerated erosion or interrupt water movement within wetlands; and

(b) Thereafter, except as provided in (c) of this subsection, the landowner shall outslope and clear culverts or repair ditches ((or culverts which he/she knows or should know to be nonfunctional and causing or)) and cross drains likely to cause material damage to a public resource.

(c) ((The)) If a landowner allow public use, the landowner shall ((not)) be liable for penalties or monetary damages, under the act, for damage occurring from a condition brought about by the public use, ((unless he/she fails to make repairs as directed by a notice to comply.)) Landowners are encouraged to control road use through gating or other opportunities such as the green dot program.

*(4) **Additional ((culverts/maintenance)) drainage management.** If the department determines based on physical evidence that the above maintenance has been or will be inadequate to protect public resources and that additional measures will provide adequate protection it shall require the landowner or operator to either elect to:

(a) ((Install)) Require additional ((or larger culverts or other)) drainage improvements as deemed necessary by the department; or

(b) Agree to an additional road maintenance program. Such improvements in drainage or maintenance may be required only after a field inspection and opportunity for an informal conference.

*(5) **Abandoned roads.** An abandoned road is a forest road which the forest landowner has abandoned in accordance with procedures of (a) through (e) of this subsection. Roads are exempt from maintenance only after (e) of this subsection is completed:

(a) Roads are outsloped, water barred, or otherwise left in a condition suitable to control erosion and maintain water movement within wetlands; and

(b) Ditches are left in a suitable condition to reduce erosion; and

(c) The road is blocked so that four wheel highway vehicles can not pass the point of closure at the time of abandonment; and

(d) Bridges, culverts, and fills on all waters are removed, except where the department determines other measures would provide adequate protection to public resources.

(e) The department shall determine whether the road has been abandoned according to procedures of this subsection. If the department determines the road is properly abandoned, it shall within thirty days notify the landowner in writing that the road is officially abandoned.

*(6) **Orphan Roads.** A forest road which the forest landowner has not used since 1974 for forest practice activities. Many of these roads are overgrown or closed off but have not satisfied the formal abandonment process in accordance with procedures of (a) through (e) in subsection (5) above. Roads are exempt from maintenance only after (e) of subsection (5) above is completed.

*(7) **Brush control.** Chemical control of roadside brush shall not be done where chemicals will directly enter any Type ((1, 2, or 3 or flowing Type 4 or 5 Water)) S, F, or N water or Type A or B Wetlands. Refer to WAC 222-38-020 for additional information.

((*)) *(8) **Road surface treatment.**

(a) Apply oil to the road surface only when the temperature is above 55 degrees F and during the season when there is a minimal chance of rain for the next 48 hours. Use of waste oil is subject to RCW 70.951.060(5).

(b) Water the road surface prior to application of oil to assist in penetration.

(c) Construct a temporary berm along the road shoulder wherever needed to control runoff of the applied chemical.

(d) Take extreme care to avoid excess application of road chemicals. Shut off the flow at all bridges.

(e) When cleaning out chemical storage tanks or the application equipment tanks used for storage and application of road treatment materials, dispose of the rinse water fluids on the road surface or in a place safe from potential contamination of water.

(f) The use of dry road chemicals shall be in compliance with WAC 222-38-020.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published

above varies from its predecessor in certain respects not indicated by the use of these markings.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 92-15-011, filed 7/2/92, effective 8/2/92)

WAC 222-24-060 Rock quarries, gravel pits, borrow pits, and spoil disposal areas. Not covered by the Surface Mine Reclamation Act of 1971 (chapter 78.44 RCW).

(1) Location of pits. Except as approved by the department, rock quarries and gravel pits opened after January 1, 1975 shall be located above the ((50)) 100-year flood level.

(2) Location of spoil disposal areas. Except as approved by the department, spoil disposal areas shall be located:

(a) Above the ((50)) 100-year flood level.

(b) Where the final slope after disposal will be no steeper than 1 1/2:1.

(c) Where practical, on areas having low potential timber productivity.

(d) Where the risk of soil erosion and mass soil movement is minimal.

(e) All spoils shall be placed to allow drainage without additional water ponding.

(f) All spoils shall be located outside of Type A and Type B Wetlands and their wetland management zones. Spoils shall not be located within the boundaries of forested wetlands without written approval of the department and unless a less environmentally damaging location is unavailable. No spoil area greater than 0.5 acre in size shall be allowed within wetlands.

(3) Pit drainage. During construction and use of rock quarries, gravel pits, or borrow pits, runoff water shall be either diverted onto the forest floor or be passed through one or more settling basins as approved by the department.

(4) Rehabilitation required. All rock quarries, gravel pits, spoil disposal areas and borrow pits used after January 1, 1975 shall be reclaimed within 2 years from the time the rock or gravel source is either exhausted or abandoned.

(5) Rehabilitation standards. Where rehabilitation is required:

(a) Remove all deleterious material that has potential for damaging the public resource, the soil productivity, or that would prevent reforestation of an otherwise plantable area.

(b) Grade slopes to less than the angle of repose unless otherwise approved.

(c) Reforest in accordance with chapter 222-34 WAC to the extent practical.

(d) Seed unreforested exposed erodible soils with grass, clover or other ground cover.

(6) Major spoil disposal operations. Where a spoil disposal operation involves more than 1,000 cubic yards of spoils:

(a) The spoils shall be placed to provide drainage onto the forest floor without water ponding within the disposal area;

(b) The site shall be reforested in accordance with chapter 222-34 WAC to the extent practical; and

(c) If significant erosion of the spoils develops, the eroding areas shall be water barred and any unreforested areas shall be matted, mulched, or seeded with grass or ground cover.

AMENDATORY SECTION (Amending WSR 92-15-011, filed 7/2/92, effective 8/2/92)

WAC 222-30-010 Policy—Timber harvesting. *(1)

This section covers all removal of timber from forest lands in commercial operations, commercial thinning, salvage of timber, relogging merchantable material left after prior harvests, postharvest cleanup, and clearing of merchantable timber from lands being converted to other uses. It does not cover removal of incidental vegetation or removal of firewood for personal use. To the extent practical the department shall coordinate the activities on a multiple disciplinary planning approach. The riparian management zone requirements specified in this section are designed to provide protection for water quality and fisheries and wildlife habitat through ensuring present and future supplies of large organic debris for streams, snags, canopy cover, and a multistoried diverse forest adjacent to Type ((1, 2 and 3 Waters)) S and N waters.

(2) Wetland areas serve several significant functions in addition to timber production: Providing fish and wildlife habitat, protecting water quality, moderating and preserving water quantity. Wetlands may also contain unique or rare ecological systems. The wetland management zone and wetland requirements specified in this section are designed to protect these wetland functions when measured over the length of a harvest rotation, although some of the functions may be reduced until the midpoint of the timber rotation cycle. Landowners are encouraged to voluntarily increase wetland acreage and functions over the long-term.

(3) Riparian management zones (RMZ). RMZs are designed to be fully functional by providing: Stream bank stability and sediment control, large woody debris and shade, and windthrow protection and favorable microclimate. RMZs shall be measured horizontally from the bankfull width on each side of Type S, F, and N waters, as defined in WAC 222-16-030, or from the outer edge of the channel migration zone, whichever is greater.

(Note: Other laws or regulations and/or permit requirements may apply. See chapter 222-50 WAC.)

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/31/97 [12/3/97], effective 1/3/98)

WAC 222-30-020 Harvest unit planning and design.

(1) Logging system. The logging system should be appropriate for the terrain, soils, and timber type so yarding or skidding can be economically accomplished in compliance with these ((regulations)) rules.

***(2) Landing locations.** Locate landings to prevent damage to public resources. Avoid excessive excavation and filling.

***(3) Western Washington riparian management zones shall include:**

(a) For Type S, F, and N waters, wetlands adjacent to the stream. When the RMZ overlaps a Type A or B wetland or a wetland management zone, the requirement which best protects public resources shall apply.

(b) For Type S and F perennial and seasonal waters:

(i) A 100 foot wide no-harvest and no-ground-based-yarding-equipment zone or

(ii) The applicant may propose an alternate plan for harvest within the 100 foot zone provided that a 30 foot-wide no-harvest and no-ground-based-equipment zone is provided and that the plan is predicated on improving riparian function. The plan must be agreed to by the departments of natural resources, fish and wildlife and ecology, and

(iii) An additional 70 foot wide zone or a distance equal to the site potential tree height (SPTH), whichever is greater, that includes an average of

Option 1 [10 trees per acre]

or

Option 2 [40 trees per acre].

(c) For Type N perennial and seasonal waters:

Option 1

[(i) A two thirds SPTH no-harvest and no-ground-based-yarding-equipment zone on type N perennial streams, and one-half SPTH no-harvest and no-ground-based-yarding-equipment zone on Type N seasonal streams.]

or

Option 2

[(i) A 30 foot wide no-ground-based-yarding-equipment zone

AND

(ii) Protection of the following sensitive sites:

(A) A 50 foot wide no-harvest and no-ground-based-yarding-equipment zone for 500 feet directly upstream from any perennial Type N water above a Type S or F water AND

(B) A 50 foot wide no-harvest and no-ground-based-equipment radius measured from the junction of two perennial Type N waters, and

(C) At the initiation point of perennial flow on a Type N water;

(D) A 50 foot wide no-harvest and no-ground-based-equipment zone for a perennial seep or spring as defined in WAC 222-16-030, within 100 feet of a perennial Type N water;

(E) A no-harvest and no-ground-based-equipment zone for landslide-prone headwalls and inner gorges as defined in WAC 222-16-010; and

(F) A no-harvest and no-ground-based-equipment zone for a channel disturbance zone as defined in WAC 222-16-010.

(G) Tailed frog habitat defined as channel gradients greater than 20% with granitic or basaltic geology; and

(iii) For Type N perennial waters, shade from commercial tree species is required as follows:

(A) The stream length protected within sensitive sites (refer to (c)(ii) above) shall equal at least 50% of the total length of perennial Type N waters within the boundaries of each unit of the application or notification.

(B) If 50% is not met as required in subsection (i) above, then additional trees shall be left in any of the following areas until at least 50% is achieved:

(I) Channel gradients less than 20% (low gradient areas);

(II) Hyporheic areas defined in WAC 222-16-010;

(III) Starting at the most downstream boundary of the unit and working upstream.]

((*) Western Washington riparian management zones.

These zones shall be measured horizontally from the ordinary high-water mark of Type 1, 2 or 3 Water and extend to the line where vegetation changes from wetland to upland plant community, or the line required to leave sufficient shade as required by WAC 222-30-040, whichever is greater, but shall not be less than 25 feet in width nor more than the maximum widths described in (e) of this subsection, provided that the riparian management zone width shall be expanded as necessary to include wetlands or ponds adjacent to the stream. When the riparian management zone overlaps a Type A or B Wetland or a wetland management zone, the requirement which best protects public resources shall apply.

(a) Harvest units shall be designed so that felling, bucking, yarding or skidding, and reforestation can be accomplished in accordance with these regulations, including those regulations relating to stream bank integrity and shade requirements to maintain stream temperature. Where the need for additional actions or restrictions adjacent to waters not covered by the following become evident, WAC 222-12-050 and 222-12-060 may apply.

(b) When requested in writing by the applicant, the department shall assist in preparation of an alternate plan for the riparian management zone.

(c) Within the riparian management zone, there shall be trees left for wildlife and fisheries habitat as provided for in the chart below. Fifty percent or more of the trees shall be live and undamaged on completion of the harvest. The leave trees shall be randomly distributed where feasible; some clumping is allowed to accommodate operational considerations. The number, size, species and ratio of leave trees, deciduous to conifer, is specified by the bed material and average width of the water type within the harvest unit. Trees left according to (d) of this subsection may be included in the number of required leave trees in this subsection.

PROPOSED

Western Washington Riparian Leave Tree Requirements

Water Type/ Average Width	RMZ Maximum Width	Ratio of Conifer to Deciduous/ Minimum Size Leave Trees	# Trees/1000 ft. each side	Boulder/Bed rock <10" Diameter
			Gravel/ Cobble	
1 & 2 Water 75' & over	100+	representative of stand	50 trees	25 trees
1 & 2 Water under 75'	75+	representative of stand	100 trees	50 trees
3 Water 5' & over	50+	2 to 1/ 12" or next largest available	75 trees	25 trees
3 Water less than 5'	25+	1 to 1/ 6" or next largest available	25 trees	25 trees

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"Or next largest available" requires that the next largest trees to those specified in the rule be left standing when those available are smaller than the sizes specified. Ponds or lakes which are Type 1, 2 or 3 Waters shall have the same leave tree requirements as boulder/bedrock streams.

(d) For wildlife habitat within the riparian management zone, leave an average of 5 undisturbed and uncut wildlife trees per acre at the ratio of 1 deciduous tree to 1 conifer tree equal in size to the largest existing trees of those species within the zone. Where the 1 to 1 ratio is not possible, then substitute either species present. Forty percent or more of the leave trees shall be live and undamaged on completion of harvest. Wildlife trees shall be left in clumps whenever possible.

(e) When 10 percent or more of the harvest unit lies within any combination of a riparian management zone of Type 1, 2 or 3 Waters or a wetland management zone and the harvest unit is a clearcutting of 30 acres or less, leave not less than 50 percent of the trees required in (e) of this subsection.)

***(4) Eastern Washington riparian management zones shall include:**

(a) For Type S, F and N waters, wetlands adjacent to the stream. When the RMZ overlaps a Type A or B wetland or a wetland management zone, the requirement which best protects public resources shall apply.

(b) For Type S and F perennial and seasonal waters:

(i) a 100 foot wide or a distance equal to a site-potential tree height, whichever is greater, no-harvest and no-ground-based-yarding-equipment zone, or

(ii) The applicant may propose an alternate plan for harvest within the 100 foot zone to address forest health salvage and fire prevention, provided that the proposal contains a 30 foot no-harvest and no-ground-based-equipment zone and

that the plan is predicated on improving riparian function. The plan must be agreed to by the departments of natural resources, fish and wildlife and ecology.

(c) For Type N perennial and seasonal waters:

Option 1

[(i) A two thirds SPTH no-harvest and no-ground-based-yarding-equipment zone on type N perennial streams, and one-half SPTH no-harvest and no-ground-based-yarding-equipment zone on type N seasonal streams.]

or

Option 2

[(i) A 30 foot wide no-ground-based-yarding-equipment zone AND

(ii) Protection of the following sensitive sites:

(A) A 50 foot wide no-harvest and no-ground-based-yarding-equipment zone for 500 feet directly upstream from any perennial Type N water above a Type S or F water AND

(B) A 50 foot wide no-harvest and no-ground-based-equipment radius measured from the junction of two perennial Type N waters, and

(C) at the initiation point of perennial flow on a Type N water;

(D) A 50 foot wide no-harvest and no-ground-based-equipment zone for a perennial seep or spring as defined in WAC 222-16-030, within 100 feet of a perennial Type N water;

(E) A no-harvest and no-ground-based-equipment zone for landslide-prone headwalls and inner gorges as defined in WAC 222-16-010; and

(F) A no-harvest and no-ground-based-equipment zone for a channel disturbance zone as defined in WAC 222-16-010.

(G) Tailed frog habitat defined as channel gradients greater than 20% with granitic or basaltic geology; and

(iii) For Type N perennial waters, shade from commercial tree species is required as follows:

(A) The stream length protected within sensitive sites (refer to (c)(ii) above) shall equal at least 50% of the total length of perennial Type N waters within the boundaries of each unit of the application or notification.

(B) If 50% is not met as required in subsection (i) above, then additional trees shall be left in any of the following areas until at least 50% is achieved:

(I) Channel gradients less than 20% (low gradient areas);

(II) Hyporheic areas defined in WAC 222-16-010;

(III) Starting at the most downstream boundary of the unit and working upstream.]

((*4) Eastern Washington riparian management zones. These zones shall be measured horizontally from the ordinary high water mark of Type 1, 2 or 3 Waters and extend to the line where vegetation changes from wetland to upland plant community, or to the line required to leave sufficient shade as required by WAC 222-30-040, whichever is greater, but shall not be less than the minimum width nor more than the maximum widths described in (e) of this subsection, provided that the riparian management zone width shall be expanded as necessary to include wetlands or ponds adjacent to the stream. When the riparian management zone overlaps a Type A or B Wetland or a wetland management zone, the requirement which best protects public resources shall apply.

(a) Harvest units shall be designed so that felling, bucking, yarding or skidding, and reforestation can be accomplished in accordance with these regulations, including those regulations relating to stream bank integrity and shade requirements to maintain stream temperature. Where the need for additional actions or restrictions adjacent to waters not covered by the following become evident, WAC 222-12-050 and 222-12-060 may apply.

(b) When requested in writing by the applicant, the department shall assist in preparation of an alternate plan for the riparian management zone.

(c) Within the riparian management zone, there shall be trees left for wildlife and fisheries habitat as provided for below. Fifty percent or more of the trees shall be live and undamaged on completion of the harvest. The leave trees shall be randomly distributed where feasible; some clumping is allowed to accommodate operational considerations.

(i) The width of the riparian management zone shall be based on the adjacent harvest type as defined in WAC 222-16-010 "Partial cutting." When the adjacent unit harvest type is:

Partial cutting The riparian management zone width shall be a minimum of 30 feet to a maximum of 50 feet on each side of the stream.

Other harvest types The riparian management zone shall average 50 feet in width on each side of the stream with a minimum width of 30 feet and a maximum of 300 feet on each side of the stream.

(ii) Leave tree requirements within the riparian management zones of Type 1, 2 or 3 Waters:

(A) Leave all trees 12 inches or less in diameter breast height (dbh); and

(B) Leave all wildlife reserve trees within the riparian management zone where operations in the vicinity do not violate the state safety regulations (chapter 296-54 WAC and chapter 49.17 RCW administered by department of labor and industries, safety division); and

(C) Leave 16 live conifer trees/acre between 12 inches dbh and 20 inches dbh distributed by size, as representative of the stand; and

(D) Leave 3 live conifer trees/acre 20 inches dbh or larger and the 2 largest live deciduous trees/acre 16 inches dbh or larger. Where these deciduous trees do not exist, and where 2 wildlife reserve trees/acre 20 inches or larger do not exist, substitute 2 live conifer trees/acre 20 inches dbh or larger. If live conifer trees of 20 inches dbh or larger do not exist within the riparian management zone, then substitute the 5 largest live conifer trees/acre; and

(E) Leave 3 live deciduous trees/acre between 12 inches and 16 inches dbh where they exist.

(iii) Minimum leave tree requirements per acre for Type 1, 2 and 3 Waters. Trees left for (e)(ii) of this subsection shall be included in the minimum counts.

(A) On streams with a boulder/bedrock bed, the minimum leave tree requirements shall be 75 trees/acre 4 inches dbh or larger.

(B) On streams with a gravel/cobble (less than 10 inches diameter) bed, the minimum leave tree requirement shall be 135 trees/acre 4 inches dbh or larger.

(C) On lakes or ponds the minimum leave tree requirement shall be 75 trees/acre 4 inches dbh or larger.

Note: (See the Forest Practices Board Manual for assistance in calculating trees/acre and average RMZ widths.)

(d) When 10 percent or more of the harvest unit lies within any combination of a riparian management zone of Type 1, 2 or 3 Waters or a wetland management zone and either the harvest unit is a clearcutting of 30 acres or less or the harvest unit is a partial cutting of 80 acres or less, leave not less than 50 percent of the trees required in (e) of this subsection. (See WAC 222-16-010 "Partial cutting."))

((*5) Riparian leave tree areas. The department will require trees to be left along Type 4 Water where such practices are necessary to protect public resources. Where such practices are necessary leave at least 25 conifer or deciduous trees, 6 inches in diameter or larger, on each side of every 1000 feet of stream length within 25 feet of the stream. The leave trees may be arranged to accommodate the operation.))

(5) Harvest units. Harvest units shall be designed so that felling, bucking, yarding or skidding can be accomplished in accordance with these rules.

*6) Forested wetlands. Within the wetland, unless otherwise approved in writing by the department, harvest methods shall be limited to low impact harvest or cable systems. Where feasible, at least one end of the log shall be suspended during yarding.

(a) When forested wetlands are included within the harvest area, landowners are encouraged to leave a portion (30 to 70%) of the wildlife reserve tree requirement for the harvest area within a wetland. In order to retain undisturbed habitat

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within forested wetlands, these trees should be left in clumps. Leave tree areas should be clumped adjacent to streams, riparian management zones, or wetland management zones where possible and they exist within forested wetlands. Green recruitment trees should be representative of the size and species found within the wetland. Leave nonmerchantable trees standing where feasible.

(b) If a RMZ or WMZ lies within a forested wetland, the leave tree requirement associated with those areas may be counted toward the percentages in (a) of this subsection.

(c) If the conditions described in (a) and (b) of this subsection are met, the distribution requirements for wildlife reserve trees and green recruitment trees (subsection (11)(e) of this section) are modified as follows: For purposes of distribution, no point within the harvest unit shall be more than 1000 feet from a wildlife reserve tree and green recruitment tree retention area.

(d) Approximate determination of the boundaries of forested wetlands greater than 5 acres shall be required.

Approximate boundaries and areas shall be deemed to be sufficient for harvest operations.

(e) The department shall consult with the department of fish and wildlife and affected Indian tribes about site specific impacts of forest practices on wetland-sensitive species in forested wetlands.

***(7) Wetland management zones (WMZ).** These zones shall apply to Type A and B Wetlands, as indicated in (a) of this subsection, and shall be measured horizontally from the wetland edge or the point where the nonforested wetland becomes a forested wetland, as determined by the method described in the board manual, and shall be of an average width as described in (a) of this subsection. These zones shall not be less than the minimum nor more than the maximum widths described in (a) of this subsection. When these zones overlap a riparian management zone the requirement which best protects public resources shall apply.

***(a) Wetland management zones (WMZ)** shall have variable widths based on the size of the wetland and the wetland type, described as follows:

Wetland Management Zones

Wetland Type	Acres of Nonforested Wetland*	Maximum WMZ Width	Average WMZ Width	Minimum WMZ Width
A (including bogs)	Greater than 5	200 feet	100 feet	50 feet
A (including bogs)	0.5 to 5	100 feet	50 feet	25 feet
A (bogs only)	0.25 to 0.5	100 feet	50 feet	25 feet
B	Greater than 5	100 feet	50 feet	25 feet
B	0.5 to 5			25 feet
B	0.25 to 0.5	No WMZ required	No WMZ required	

*For bogs, both forested and nonforested acres are included.

(b) Within the WMZ, leave a total of 75 trees per acre of WMZ greater than 6 inches dbh in Western Washington and greater than 4 inches dbh in Eastern Washington, 25 of which shall be greater than 12 inches dbh including 5 trees greater than 20 inches dbh, where they exist. Leave trees shall be representative of the species found within the WMZ.

(c) Retain wildlife reserve trees where feasible. Type 1 and 3 wildlife reserve trees may be counted among, and need not exceed, the trees required in (b) of this subsection. Leave all cull logs on site.

(d) Partial-cutting or removal of groups of trees is acceptable within the WMZ. The maximum width of openings created by harvesting within the WMZ shall not exceed 100 feet as measured parallel to the wetland edge. Openings within WMZs shall be no closer than 200 feet. Landowners are encouraged to concentrate leave trees within the WMZ to the wetland edge.

***(e) Tractors, wheeled skidders, or other ground based harvesting systems shall not be used within the minimum WMZ width without written approval of the department.**

*(f) When 10% or more of a harvest unit lies within any combination of a wetland management zone or a riparian management zone of Type 1, 2, or 3 Waters and either the harvest unit is a clearcut of 30 acres or less or the harvest unit is a partial cut of 80 acres or less, leave not less than 50% of the trees required in (b) of this subsection.

*(8) **Type A or B Wetlands.** Within the boundaries of Type A or B Wetlands the following shall apply:

(a) Individual trees or forested wetland areas less than 0.5 acre in size may occur. These trees have a high habitat value to the nonforested wetland. Leave individual trees or forested wetlands less than 0.5 acre. These trees may be counted toward the WMZ requirements.

(b) Harvest of upland areas or forested wetlands which are surrounded by Type A or B Wetlands must be conducted in accordance with a plan, approved in writing by the department.

(c) No timber shall be felled into or cable yarded across Type A or B Wetlands without written approval of the department.

(d) Harvest shall not be allowed within a Type A Wetland which meets the definition of a bog.

(9) **Future productivity.** Harvesting shall leave the land in a condition conducive to future timber production except:

(a) To the degree required for riparian management zones; or

(b) Where the lands are being converted to another use or classified urban lands as specified in WAC 222-34-050.

(10) **Wildlife habitat.** This subsection is designed to encourage timber harvest practices that would protect wildlife habitats, provided, that such action shall not unreasonably restrict landowners action without compensation.

(a) The applicant should make every reasonable effort to cooperate with the department of fish and wildlife to identify critical wildlife habitats (state) as defined by the board. Where these habitats are known to the applicant, they shall be identified in the application or notification.

(b) Harvesting methods and patterns in established big game winter ranges should be designed to insure adequate access routes and escape cover where practical.

(i) Where practical, cutting units should be designed to conform with topographical features.

(ii) Where practical on established big game winter ranges, cutting units should be dispersed over the area to provide cover, access for wildlife, and to increase edge effect.

(11) **Wildlife reserve tree management.** In areas where leaving wildlife reserve trees under this section will not create a significant fire hazard, or significant hazard to overhead power lines and operations that are proposed in the vicinity of wildlife reserve trees will not create a significant safety or residential hazard nor conflict with achieving conformance with the limitation of or performance with the provisions of chapter 76.04 RCW (snag falling law) and chapter 49.17 RCW (safety), wildlife reserve trees will be left to protect habitat for cavity nesting wildlife in accordance with the following:

(a) In Western Washington, for each acre harvested 3 wildlife reserve trees, 2 green recruitment trees, and 2 down logs shall be left. In Eastern Washington for each acre har-

vested 2 wildlife reserve trees, 2 green recruitment trees, and 2 down logs shall be left. Type 1 wildlife reserve trees may be counted, at the landowner's option, either as a wildlife reserve tree or as a green recruitment tree. If adequate wildlife reserve trees are not available, no additional green recruitment trees will be required as substitutes. Landowners shall not under any circumstances be required to leave more than 2 green recruitment trees per acre for the purpose of wildlife reserve tree recruitment, or be required to leave Type 3 or 4 wildlife reserve trees.

(b) In Western Washington, only those wildlife reserve trees 10 or more feet in height and 12 or more inches dbh shall be counted toward wildlife reserve tree retention requirements. In Eastern Washington, only those wildlife reserve trees 10 or more feet in height and 10 or more inches dbh shall be counted toward wildlife reserve tree retention requirements. Green recruitment trees, 10 or more inches dbh and 30 or more feet in height and with at least 1/3 of their height in live crown, left standing after harvest may be counted toward green recruitment tree requirements. Green recruitment trees and/or wildlife reserve trees left to meet other requirements of the rules or those left voluntarily by the landowner shall be counted toward satisfying the requirements of this section. Large, live defective trees with broken tops, cavities, and other severe defects are preferred as green recruitment trees. Only down logs with a small end diameter greater than or equal to 12 inches and a length greater than or equal to 20 feet or equivalent volume shall be counted under (a) of this subsection. Large cull logs are preferred as down logs.

(c) In the areas where wildlife reserve trees are left, the largest diameter wildlife reserve trees shall be retained to meet the specific needs of cavity nesters. Where the opportunity exists, larger trees with numerous cavities should be retained and count as recruitment trees.

(d) In order to facilitate safe and efficient harvesting operations, wildlife reserve trees and recruitment trees may be left in clumps. For purposes of distribution, no point within the harvest unit shall be more than 800 feet from a wildlife reserve tree or green recruitment tree retention area. Subject to this distribution requirement, the location of these retention areas and the selection of recruitment trees shall be at the landowner's discretion. Closer spacing of retention areas through voluntary action of the landowner is encouraged. Wildlife reserve tree and green recruitment tree retention areas may include, but are not limited to, riparian management zones, riparian leave tree areas, other regulatory leave areas, or voluntary leave areas that contain wildlife reserve trees and/or green recruitment trees.

(e) In order to provide for safety, landowners may remove any Type 3 or 4 wildlife reserve tree which poses a threat to humans working, recreating, or residing within the hazard area of that tree. In order to provide for fire safety, the distribution of wildlife reserve tree retention areas, described in (d) of this subsection, may be modified as necessary based on a wildlife reserve tree management plan proposed by the landowner and approved by the department.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-30-070 Tractor and wheeled skidding systems. ***(1) Typed waters and wetlands.**

(a) Tractor and wheeled skidders shall not be used in ((Type 1, 2 or 3 Water)), typed waters except with approval by the department and with a hydraulic project approval of the department of fish and wildlife.

(b) In order to maintain wetland water movement and water quality, and to prevent soil compaction, tractor or wheeled skidders shall not be used in Type A or B Wetlands without prior written approval of the department.

(c) Within all wetlands, tractors and wheeled skidder systems shall be limited to low impact harvest systems. Ground based logging systems operating in wetlands shall only be allowed within wetlands during periods of low soil moisture or frozen soil conditions.

(d) Skidding across any ((flowing Type 4 Water)) Type N water shall be minimized and when done, temporary stream crossings shall be used, if necessary, to maintain stream bed integrity.

(e) Whenever skidding in or across any type water, the direction of log movement between stream banks shall be as close to right angles to the stream channel as is practical.

***(2) Riparian management zone.**

(a) Logging will be permitted within the zone for typed waters. However, any use of tractors, wheeled skidders, or other yarding machines within the zone must be as described in an approved forest practices application or otherwise approved in writing by the department.

(b) Where skidding ((in or through)) across the riparian management zone is necessary, the number of skidding routes through the zone shall be minimized.

(c) Logs shall be skidded so as to minimize damage to leave trees and vegetation in the riparian management zone, to the extent practical and consistent with good safety practices.

***(3) Wetlands management zones.**

(a) Logging will be permitted within wetland management zones.

(b) Where feasible logs shall be skidded at least with one end suspended from the ground so as to minimize soil disturbance and damage to leave trees and vegetation in the wetland management zone.

(c) Tractors, wheeled skidders, or other ground based harvesting systems shall not be used within the minimum WMZ width without written approval of the department.

***(4) Deadfalls.** Logs firmly embedded in the bed or bank of ((Type 1, 2, 3 or 4 Waters)) typed waters shall not be removed or unnecessarily disturbed without hydraulic project approval of the department((s)) of fish((eries or)) and wildlife.

***(5) Moisture conditions.** Tractor and wheeled skidders shall not be used on exposed erodible soils or saturated soils when soil moisture content is so high that unreasonable soil compaction, soil disturbance, or wetland, stream, lake or pond siltation would result.

(6) Protection of residual timber. Reasonable care shall be taken to minimize damage from skidding to the stems and root systems of residual timber and to young reproduction.

***(7) Skid trail construction.**

(a) Skid trails shall be kept to the minimum feasible width.

(b) Reasonable care shall be taken to minimize the amount of sidecast required and shall only be permitted above the ((50)) 100-year flood level.

(c) Skid trails shall be outsloped where practical, but be insloped where necessary to prevent logs from sliding or rolling downhill off the skid trail.

***(8) Skid trail maintenance.** Upon completion of use and termination of seasonal use, skid trails on slopes in exposed soils shall be outsloped with drainage dips or water barred a minimum of every 10-foot vertical change where necessary to prevent soil erosion.

***(9) Slope restrictions.** Tractor and wheeled skidders shall not be used on slopes where in the opinion of the department this method of operation would cause unnecessary or material damage to a public resource.

(10) Disturbance avoidance for northern spotted owls. The operation of heavy equipment within a SOSEA boundary shall not be allowed within 0.25 mile of a northern spotted owl site center between March 1 and August 31, provided that, this restriction shall not apply if:

(a) The landowner demonstrates that the owls are not actively nesting during the current nesting season; or

(b) The forest practice is operating in compliance with a plan or agreement developed for the protection of the northern spotted owl under WAC 222-16-080 (6)(a), (e), or (f).

(11) Disturbance avoidance for marbled murrelets.

Operation of heavy equipment shall not be allowed within 0.25 mile of an occupied marbled murrelet site during the daily peak activity periods within the critical nesting season, provided that, this restriction shall not apply if the forest practice is operating in compliance with a plan or agreement developed for the protection of the marbled murrelet under WAC 222-16-080 (6)(a) or (c).

AMENDATORY SECTION (Amending WSR 97-24-091, filed 12/3/97, effective 1/3/98)

WAC 222-38-020 Handling, storage, and application of pesticides. ***(1) No pesticide leakage, contamination, pollution.**

Transportation, handling, storage, loading, application, and disposal of pesticides shall be consistent with applicable label requirements and other state and federal requirements.

***(2) Mixing and loading areas.**

(a) Mix pesticides and clean tanks and equipment only where any accidental spills would not enter surface water or wetlands.

(b) Storage and loading areas should be located where accidental spillage of pesticides will not enter surface water or wetlands. If any pesticide is spilled, immediate appropriate procedures should be taken to contain it.

(c) Use devices or procedures to prevent "back siphoning" such as providing an air gap or reservoir between the water source and the mixing tank.

***(3) Riparian management zone.** Pesticide treatments within the riparian management zone shall be by hand unless the department has approved a site specific plan with another method of treatment.

***(4) Wetland management zone.** Pesticide treatment within the wetland management zone shall be by hand unless the department has approved a site specific plan with another method of treatment.

***(5) Aerial application of pesticides.** The forest practices board manual outlines the best management practices to be used for aerial application of pesticides. See WAC 222-12-090(16).

(a) To keep pesticides out of the water, leave the following:

Option 1

(i) A minimum 50 foot buffer width for applications made with favorable wind conditions.

(ii) A minimum of 250 feet for applications made in unfavorable wind conditions.

(iii) An alternate plan of buffer widths less than 250 feet with equal or greater drift protection in unfavorable wind conditions.]

OR

Option 2

(i) A minimum buffer width of 50 feet for applications made with favorable wind conditions.

(ii) Variable buffer widths of 50 to 325 feet subject to spray nozzle type and spray release in unfavorable wind conditions.

(iii) An alternate plan of buffer widths less than 325 feet with equal or greater drift protection in unfavorable wind conditions.]

OR

Option 3

(i) A 50 foot buffer strip on all typed waters, except segments of Type ((4 and 5)) N waters with no surface water and other areas of open water, such as ponds or sloughs.

(b) Apply the initial swath parallel to the buffer strip in (a) of this subsection unless a deviation is approved in advance by the department. Drift control agents shall be required adjacent to buffer strips. Avoid applications that might result in drift causing direct entry of pesticides into riparian management zones, Type A and B Wetlands, wetland management zones, and all typed waters, except segments of Type ((4 and 5)) N waters with no surface water.

(c) Use a bucket or spray device capable of immediate shutoff.

(d) Shut off spray equipment during turns and over open water.

(e) Leave at least a 200 foot buffer strip around residences and 100 foot buffer strip adjacent to lands used for agriculture unless such residence or farmland is owned by the

forest landowner or the aerial application is acceptable to the resident or landowner.

(f) The landowner shall identify for the operator the units to be sprayed and the untreated areas within the units with appropriately marked aerial photos or detailed planimetric maps. Before application of the pesticide an over-flight of the area shall be made by the pilot with the marked photos or maps.

(g) Aerial chemical application areas shall be posted by the landowner by signing at significant points of regular access at least 5 days prior to treatment. Posting shall remain at least 15 days after the spraying is complete. The department may require an extended posting period in areas where human use or consumption of plant materials is probable. Posting at formal, signed trailheads that are adjacent to aerially treated units is required. The signs will contain the name of the product used, date of treatment, a contact telephone number, and any applicable restrictions.

***(6) Ground application of pesticides with power equipment.**

Leave a ((25)) 30-foot buffer strip on each side of Type A or B Wetlands and all typed waters, except segments of Type ((4 and 5 Waters)) N waters with no surface water.

***(7) Hand application of pesticides.**

Apply only to specific targets, such as vegetation, trees, stumps, and burrows, or as bait or in traps.

***(8) Limitations on application.** Pesticides shall be applied only in accordance with all limitations:

(a) Printed on the United States Environmental Protection Agency container registration label, and/or

(b) Established by regulation of the state department of agriculture.

(c) Established by state and local health departments (in municipal watersheds).

(d) Established by the Federal Occupational Safety and Health Administration, or the state department of labor and industries, as they relate to safety and health of operating personnel and the public.

(e) The department or the department of agriculture may suspend further use of any equipment responsible for chemical leakage until the deficiency has been corrected to the satisfaction of the department suspending its usage.

***(9) Container disposal.** Pesticide containers shall be either:

(a) Removed from the forest and disposed of in the manner consistent with label directions; or

(b) Removed and cleaned for reuse in a manner consistent with any applicable regulations of the state department of agriculture or the state or local health departments.

***(10) Daily records - aerial application of pesticides.** On all aerial applications of pesticides, the operator shall maintain for 7 years daily records of spray operations as required by the state department of agriculture WAC 16-228-190.

***(11) Reporting of spills.** All potentially damaging chemical spills shall be immediately reported to the department of ecology. Emergency telephone numbers for reporting spills shall be available at the department's regional offices.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 93-12-001, filed 5/19/93, effective 6/19/93)

WAC 222-38-030 Handling, storage, and application of fertilizers. **(1) Storage and loading areas.** Storage and loading areas should be located where accidental spillage of fertilizers will not enter surface water or wetlands. If any fertilizer is spilled, immediate appropriate procedures shall be taken to contain it.

(2) Riparian management zone. Fertilizer treatments within a riparian management zone shall be by hand unless the department has approved a site specific plan with another method of treatment.

(3) Wetland management zone. Fertilizer treatments within a wetland management zone shall be by hand unless the department has approved a site specific plan with another method of treatment.

(4) Aerial application of fertilizer.

(a) Proposed fertilization units shall be planned to avoid and to minimize the direct or indirect introduction of fertilizer into waters and wetlands.

(b) Leave a ((25)) 30 foot buffer on all Type ((1, 2, and 3 Waters)) S and F waters, except as noted in (f) of this subsection.

(c) When the helicopter flight path during fertilizer application is parallel to a water course or the WMZ edge, the centerline of the initial swath should be adjusted to prevent direct application within the buffers or WMZs.

(d) Leave at least a 200 foot buffer strip around residences and a 100 foot buffer strip adjacent to lands used for agriculture unless such residence or farmland is owned by the forest landowner or the aerial application is acceptable to the resident or landowner.

(e) The landowner shall identify for the operator the units to be fertilized and the untreated areas within the units with appropriately marked aerial photos or detailed planimetric maps. Before application of the fertilizer, an over-flight of the area shall be made by the pilot with the marked photos or maps.

(f) Where the department has been provided information by the department of ecology indicating that water quality in downstream waters is likely to be impaired by entry of fertilizer into waters, such waters shall be protected by site specific conditioning.

(5) Ground and hand application of fertilizers. Prevent fertilizer from entering Type A and B Wetlands and all typed waters, except segments of Type 4 and 5 Waters with no surface water.

(6) Reporting of fertilizer spills. All fertilizer spills involving streams, lakes, wetlands, or other waters of the state shall be immediately reported to the department of ecology. Emergency telephone numbers for reporting spills shall be available at the department's regional offices.

NEW SECTION

WAC 222-46-055 Compensation for resource damages. The department will develop a schedule of penalties for compensation of resource damages where violations of the forest practices act and/or rules results in material damage to public resources (WAC 222-46-030 and WAC 222-46-040). This schedule should be developed by the department by January 1, 1999 for consideration by the Forest Practices Board for rule adoption. The schedule should be developed in consultation with the departments of fish and wildlife and ecology. Once adopted the schedule can be used to compensate for damage to public resources that cannot be completely recovered, or where the damage to public resources will have effects of a term longer than five years. These monies can be used by the department of natural resources, fish and wildlife or ecology for restorative activities that will mitigate for the resource damage (RCW 76.09.180). Resource damage assessments may be mitigated by the department if the violator chooses to perform restoration that replaces the functions lost as a result of the violation.

AMENDATORY SECTION (Amending WSR 94-01-134, filed 12/20/93, effective 1/1/94)

WAC 222-46-060 Civil penalties. **(1) Amount of penalty.** Every person who violates any provisions of RCW 76.09.010 through 76.09.280 or of the forest practices rules adopted pursuant thereto, or who converts forest land to a use other than commercial timber operation within three years after completion of the forest practice without the consent of the county, city, or town, shall be subject to a penalty in an amount of not more than ten thousand dollars for each such violation. Each and every such violation shall be a separate and distinct violation. In case of a failure to comply with a stop work order, every day's continuance thereafter shall be a separate and distinct violation.

(2) Penalty assessments shall consider the following:

(a) Repairability of the adverse effect from the violation;
(b) Whether the violation of the act or rules was intentional;

(c) Cooperation with the department;

(d) Previous violation history;

(e) Severity of the impact or the potential for material damage to public resources; and

(f) The extent to which a penalty to be imposed on a forest landowner for a forest practice violation committed by another should be reduced because the owner was unaware of the violation and did not receive substantial economic benefits from the violation.

(3) Calculation of penalty. The department shall evaluate any violation to determine if a civil penalty is warranted. When penalties are to be assessed they shall be calculated using the following process:

(a) Determine the base penalty; see WAC 222-46-065.

(b) The penalty may be adjusted using factors specific to the incident and the site. The following additional factors will be independently considered and added to the base penalty to calculate the civil penalty:

(i) Repairability:

Repairability shall be based on the length of time natural restoration or implementation of a restoration plan will take and whether repair can be achieved. The penalty will be substantially increased when natural restoration will not occur within three years and the damage cannot be effectively corrected. For this factor, up to double the base penalty may be added to the penalty.

(ii) Intention:

In making a determination of intent, the department shall consider, but not be limited to, the following considerations: The foreseeability of the violation; whether precautions were taken to avoid the violation; whether an informal conference or enforcement action was served on the violator prior to the violation. For this factor, up to double the base penalty may be added to the penalty.

(iii) Cooperation:

The department shall consider whether the violator did or did not make any attempt to correct the problem. Timeliness of action(s) and/or ignoring or evading agency contacts or directives shall determine if the penalty shall be increased. For this factor, up to double the base penalty may be added to the penalty.

(iv) Previous violation(s):

The department shall consider whether the violator has previous violations of a forest practice rule or regulation as documented in an enforcement action. The department may consider company organizations and assignment of operational responsibilities when evaluating previous violations. A history of violations with adverse impacts or potential for adverse impacts or that shows a pattern of ignoring the rules or the act, shall result in a substantially larger penalty.

Enforcement actions for the purposes of this section shall include notices to comply, stop work orders, civil penalties, and criminal citations when those enforcement actions are associated with forest practice violations. For this factor, up to quadruple the base penalty may be added to the penalty.

(v) Severity:

The department shall adjust the penalty based on the extent and magnitude of the damage or potential damage to public resources. For this factor, up to quadruple the base penalty may be added to the penalty.

(vi) Landowner involvement:

If in the opinion of the department, the landowner exercised reasonable prudence in the development of timber sale contracts or supervision of the forest practice operations, was unaware of the forest practice violation, and the landowner received no substantial economic benefit from the violation, then the landowner generally would not be assessed a civil penalty.

(c) In accordance with RCW 76.09.170, the penalty may not exceed ten thousand dollars for each and every violation.

(d) The department shall determine whether all or a portion of the penalty should be assessed against the operator, landowner, and/or timber owner. The department should consider the responsible party, the degree of control, the sophistication of the party and whether different parties conducted different violations.

(4) **Other participants.** Every person who through an act of commission or omission procures, aids or abets in the violation shall be considered to have violated the provisions

of this section and shall be subject to the penalty provided for in this section.

(5) **Government employees.** No penalty shall be imposed under this section upon any governmental official, an employee of any governmental department, agency, or entity, or a member of any board created by the act for any act or omission in his/her duties in the administration of the act or of these rules.

(6) **Written notice.** The penalty shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department describing the violation with reasonable particularity.

(7) **Remission or mitigation.** Within fifteen days after the notice is received, the person incurring the penalty may apply in writing to the ~~((department's manager of the region in which the penalty was issued)) supervisor of the department or his/her designee~~, for the remission or mitigation of such penalty. Upon receipt of the application, the department may remit or mitigate the penalty upon whatever terms the department in its discretion deems proper: *Provided*, That the department deems such remission or mitigation to be in the best interests of carrying out the purposes of the act. The department shall have authority to ascertain the facts regarding all such applications in such reasonable manner and under such rules as they may deem proper. The reviewer may reduce, dismiss or not change the civil penalty. ~~((Within fifteen days of the completion of the regional review, the person incurring the penalty may apply in writing to the supervisor of the department for further review.))~~

(8) **Right of appeal.** Any person incurring any penalty hereunder may appeal the same to the forest practices appeals board. Such appeals shall be filed within thirty days of receipt of notice imposing any penalty unless an application for remission or mitigation is made to the department. When such an application for remission or mitigation is made, such appeals shall be filed within thirty days of receipt of notice from the department setting forth the disposition of the application for remission or mitigation. Concurrently with the filing of any appeal to the forest practices appeals board as provided in this section, the appellant shall file a copy of the appeal with the department region from which the penalty was issued and a copy with the office of the attorney general.

(9) **Penalties due.** The penalty imposed under this section shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or an appeal is filed. When such an application for remission or mitigation is made, any penalty incurred under this section shall become due and payable thirty days after receipt of notice setting forth the disposition of such application unless an appeal is filed from such disposition. Whenever an appeal of the penalty incurred is filed, the penalty shall become due and payable only upon completion of all administrative and judicial review proceedings and the issuance of a final order or decision confirming the penalty in whole or in part.

(10) **Enforcement.** If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon the request of the

department, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise provided in the Forest Practices Act. In addition to or as an alternative to seeking enforcement of penalties in superior court, the department may bring an action in district court as provided in Title 3 RCW, to collect penalties.

(11) Liens. Penalties imposed under this section for violations associated with a conversion to a use other than commercial timber operation shall be a lien upon the real property of the person assessed the penalty. The department may collect such amounts in the same manner provided in chapter 60.04 RCW for mechanics' liens.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 94-01-134, filed 12/20/93, effective 1/1/94)

WAC 222-46-065 Base penalty schedule. Violations of WAC 222-20-010, operation without an approved forest practices application/notification, shall have a base penalty of \$10,000. All other WAC or RCW violations not specifically mentioned in this list shall have a base penalty of ((five hundred dollars)) \$500.

Violations of the following shall have a base penalty of ((two thousand dollars)) \$2,000:

Statute or Rule	Description
((WAC 222-20-010 RCW 76.09.050))	((Operation without an approved forest practices application/notification.))
WAC 222-20-010 RCW 76.09.060	Willful misrepresentation of information on the forest practices application/notification.
WAC 222-20-050 RCW 76.09.060	Conversion of land without consent of the county, city or town.
WAC 222-20-040 WAC 222-20-060 RCW 76.09.060	Significant, in the opinion of the department, deviation from an approved forest practices application/notification.

WSR 99-11-006
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed May 7, 1999, 8:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 99-07-026.

Title of Rule: Miscellaneous rule changes to PERS and TRS to clarify and comply with amendments to chapters 41.32, 41.40, and 41.50 RCW.

Purpose: To amend the department's rules implementing the law codified in chapters 41.40, 41.32, and 41.50 RCW in order to make those rules consistent with amendments.

Statutory Authority for Adoption: RCW 41.50.050.

Statute Being Implemented: Chapters 41.32, 41.40, and 41.50 RCW.

Summary: The proposed rules amend the department's teacher retirement system and public retirement system rules so that they clarify and conform to RCW 41.32.010, 41.32.530, 41.32.785, 41.32.802, 41.40.010, 41.40.188, 41.40.660, and 41.50.790.

Reasons Supporting Proposal: To bring the department's rules into conformity with chapters 41.32, 41.32 [41.40] and 41.50 RCW as amended.

Name of Agency Personnel Responsible for Drafting: Elyette Weinstein, 6835 Capitol Boulevard, Tumwater, (360) 664-7307; **Implementation:** Margaret Wimmer, 6835 Capitol Boulevard, Tumwater, (360) 664-7044; and **Enforcement:** Jack Bryant, 6835 Capitol Boulevard, Tumwater, (360) 664-7193.

Name of Proponent: Department of Retirement Systems, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed rule is an amendment to provisions of chapters 415-108 and 415-112 WAC governing the department's implementation of the teachers and public employee retirement systems codified in chapters 41.32, 41.40, and 41.50 RCW. The amendments are necessary to reflect the changes to these chapters enacted after the WACs went into effect. The purpose of the rules is to bring them into conformity with the statutes as amended to ensure that there are no conflicts between the rules and the authorizing statutes.

Proposal Changes the Following Existing Rules: WAC 415-108-324, 415-108-326, 415-112-725 and 415-112-727, conform to RCW 41.50.790 concerning the entitlement of exspouses to retirement benefits; and RCW 41.40.188, 41.40.660, 41.32.530, and 41.32.785 concerning benefit increases to members whose beneficiaries predecease them.

WAC 415-108-475 clarifies that matching employer contributions to a deferred compensation plan are not considered compensation earnable under RCW 41.40.010.

WAC 415-108-485, 415-108-510, 415-108-520, 415-112-41301 and 415-112-800, update outdated references to WACs and statutes.

WAC 415-112-100, 415-112-270 and 415-112-290, clarify that they apply to TRS Plan 1 exclusively.

WAC 415-112-400, 415-112-520, 415-112-700 and 415-112-710, are rewritten in plain language.

WAC 415-112-515, clarifies when a member is considered to enter retirement status. Amended to conform with RCW 41.32.802.

WAC 415-112-600, clarifies the meaning of "full time employment" for the purpose of temporary disability benefit coverage.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules apply to public employers and employees participating in the retirement systems administered by the Department of Retirement Systems (DRS). No private business is affected by the rules, therefore, no small business impact statement is required.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. DRS is not one of the agencies that

RCW 34.05.328 applies to. DRS does not opt to voluntarily bring itself within the coverage of that statute.

Hearing Location: Boardroom, 3rd Floor, 6835 Capitol Boulevard, Tumwater, WA, on June 22, 1999, at 2:00 p.m.

Assistance for Persons with Disabilities: Contact Elyette Weinstein by June 22, 1999, TDD (360) 586-5450, or (360) 664-7302.

Submit Written Comments to: Elyette Weinstein, P.O. Box 48380, Olympia, WA 98504-8380, fax (360) 664-3618, by June 22, 1999.

Date of Intended Adoption: June 22, 1999.

May 6, 1999

Elyette M. Weinstein
Rules Coordinator

AMENDATORY SECTION (Amending WSR 96-01-047, filed 12/14/95, effective 1/14/96)

WAC 415-108-324 Married member's benefit selection—Spousal consent required. (1) The member, if married, must provide the spouse's written consent to the option selected under WAC 415-108-326. If a married member does not provide spousal consent, the department will pay the retired member a joint and one-half survivor benefit allowance and record the member's spouse as the survivor in compliance with chapter 41.40 RCW and RCW 41.40.660(2).

(2) Spousal consent is not needed to enforce a marital dissolution order requiring the department to pay an ex-spouse under RCW 41.50.790.

(3) "Spousal consent" means that the married member's spouse consents to the retirement option selected by the member. The spouse's notarized signature on a completed retirement application constitutes spousal consent.

AMENDATORY SECTION (Amending WSR 96-01-047, filed 12/14/95, effective 1/14/96)

WAC 415-108-326 Retirement benefit options. RCW 41.40.188 (Plan 1) and RCW 41.40.660 (Plan 2) enable the department to provide retiring members with four retirement benefit options. In addition, retiring Plan ((1)) 1 members may select the COLA (cost-of-living adjustment) option. The retiring member must choose an option(s) when applying for service or disability retirement:

(1) **Option One (standard allowance).** The department will pay a monthly retirement allowance based solely on the single life of the member, as provided by RCW 41.40.185, 41.40.190, 41.40.230, 41.40.235, 41.40.250, 41.40.660, or 41.40.670. When the retiree dies all benefits cease. Any remaining balance of the retiree's accumulated contributions will be paid to:

- (a) The retiree's designated beneficiary; or if none, to
- (b) The retiree's surviving spouse; or if none, to
- (c) The retiree's legal representative.

Plan One:

Lucinda retires from PERS Plan ((1)) 1 in 1996 (Year 0). She would like Garth, her husband, to receive a monthly allowance when she dies. Therefore, Lucinda chooses one of the benefit options with a survivor feature. As a result, her monthly allowance is actuarially reduced from \$2,000 (standard allowance) to \$1,750. Unfortunately, Garth dies in January 2001 (Year 5). Under

The member must designate a beneficiary at the time of retirement by filing a completed and notarized form provided by the department.

(2) **Benefit options with a survivor feature.** A retiring member is allowed to select from several retirement options which create an actuarially equivalent benefit that includes a survivor feature. The survivor feature entitles the survivor to receive a monthly allowance after the retiree dies. If the member chooses one of the survivor options, the monthly benefit the member will receive is actuarially reduced to offset the cost of the survivor feature. After the retiree dies, the department pays the survivor an allowance for the duration of his or her life. If the retiree and the survivor both die before the retiree's accumulated contributions are exhausted, the remaining balance is retained in the retirement fund.

(a) Option Two (joint and whole allowance). When the retiree dies, the department pays the survivor an allowance equal to the gross monthly allowance received by the retiree.

(b) Option Three (joint and one-half allowance). When the retiree dies, the department pays the survivor an allowance equal to one-half of the retiree's gross monthly retirement allowance.

(c) Option Four (joint and two-thirds allowance).

(i) This subsection applies to members retiring on or after January 1, 1996.

(ii) When the retiree dies, the department pays the survivor an allowance equal to two-thirds (66.667%) of the retiree's gross monthly retirement allowance.

(3) If a member retires on or after June 6, 1996, the department is required to pay an ex-spouse survivor benefits pursuant to a marital dissolution order that complies with RCW 41.50.790.

(4) **Supplemental COLA option for Plan ((1)) 1 members.** Retiring Plan ((1)) 1 members may select an annual cost-of-living adjustment (COLA) option, in addition to their choice of retirement benefit options listed in subsections (1) and (2) of this section. Retiring members who choose this supplemental option will have their monthly retirement allowance actuarially reduced to offset the cost of annual adjustment.

((4))) (5) **Benefit increases when survivor predeceases retiree (pop-up provision).**

(a) This section applies to members retiring on or after January 1, 1996, who select Option Two, Three, or Four.

(b) If the survivor dies before the retiree, the retiree's monthly retirement allowance increases, effective the first day of the following month, to:

(i) The amount that would have been received had the retiree chosen Option One; plus

(ii) Any cost-of-living adjustments the retiree received prior to the survivor's death based on the original option selection.

(c) Pop-up recalculation examples.

the "pop-up" provision, Lucinda's monthly benefit will increase to \$2,000, the amount she would have received had she chosen the Option One (standard allowance) plus any COLA's Lucinda had received based on her prior benefit allowance:

Original Option 1 Benefit Amount	+	Total COLA's	=	New Benefit Amt.
\$2,000.00	+	0 (None accrued)	=	\$2,000.00*

Plan Two:

Agnes retires from PERS Plan ((H)) 2 in 1996 (Year 0). Agnes would like Beatrice, her daughter, to receive a monthly allowance after Agnes dies. Therefore, Agnes selects a retirement benefit option with a survivor feature. As a result, her monthly allowance is reduced from \$2,000 (standard allowance) to \$1,750. Unfortunately, Beatrice dies in 2001 (Year 5). Under the "pop-up" provision, Agnes' monthly benefit will increase to \$2,191.05, the amount she would have received had she chosen Option One (standard allowance) plus her accumulated COLA's:

(d) If the survivor dies and the retiree's benefit increases

Year	Option One (Standard Allow.)	Survivor Option (2,3,4) plus COLAs	COLA incr. (3% max)	\$ Increase
0 (1996)	2,000.00	1,750.00	(ineligible)	0.00
1 (1997)		1,750.00	.02	35.00
2 (1998)		1,785.00	.03	53.55
3 (1999)		1,838.55	.025	45.96
4 (2000)		1,884.51	.03	56.54
5 (2001)	2,000.00	1,941.05	—	—
			Total COLA's	191.05

Original Option One Benefit Amount \$2000	+ Total COLA's + \$191.05	= New Benefit Amount = \$2,191.05*
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*In the future (i.e. Year 4), COLAs will be based on the increased benefit amount.

under this section, and thereafter the retiree also dies before all contributions are exhausted, the remaining balance is retained by the retirement fund.

((5)) (6) Any retiree who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (2) of this section is entitled to receive a retirement allowance adjustment if the retiree meets the following conditions:

(a) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(b) The retiree provides to the department proper proof of the designated beneficiary's death. The retiree is not required to apply for the increased benefit provided by this subsection.

The adjusted retirement allowance will be effective on July 1, 1998, or the first of the month following the date of death of the designated beneficiary, whichever comes last. The adjustment is computed as described in RCW 41.40.188 (3)(c) for Plan 1 retirees or RCW 41.40.660 (3)(c) for Plan 2 retirees.

(7) Survivor. For the purposes of this provision, "survivor" means a person nominated by the member to receive a monthly benefit allowance after the member dies. A member nominates the survivor at the time of retirement by filing a completed and notarized form provided by the department.

AMENDATORY SECTION (Amending WSR 98-09-059, filed 4/17/98, effective 5/18/98)

WAC 415-108-475 Fringe benefits. Payments made by an employer to a third party to provide benefits for an employee are not part of the employee's salary or wage. Those payments are not reportable compensation. Examples of these types of payments are insurance premiums (other than those made under bona fide cafeteria plans, see WAC 415-108-455) and matching and nonmatching employer ((retirement)) contributions to a benefit plan.

Note: Mandatory salary deferrals are salary, not benefits. Such payments are reportable see WAC 415-108-459.

Example: An employer makes matching payments to employees who participate in a deferred compensation plan. This is not a mandatory salary deferral for purposes of PERS reportable compensation. Since the employer matching payment (employer match) is made contingent upon employee plan participation, it is not payment for services rendered. Therefore, it is a fringe benefit that is not reportable compensation under PERS.

AMENDATORY SECTION (Amending WSR 94-11-009, filed 5/5/94, effective 6/5/94)

WAC 415-108-510 Treatment of cash payments made in lieu of unused leave—First-in-first-out account-

ing method for determining when leave earned—Forms of leave deemed excess compensation—Conversions. (1) Cash compensation in lieu of unused annual or sick leave may be considered compensation earnable for Plan ((I)) 1 members subject to the provisions of RCW 41.40.010 (8)(a) and WAC ((415-108-450)) 415-108-456. Employers may not limit the inclusion of cash compensation paid in lieu of unused annual or sick leave as compensation earnable in conflict with RCW 41.40.010 (8)(a). Provisions of collective bargaining agreements, employment and administrative policies or other rules applied by an employer that conflict with RCW 41.40.010 (8)(a) and rules adopted thereunder are without legal effect.

(2) When an employer provides cash compensation in lieu of unused annual or sick leave, the department applies a first-in-first-out accounting method to determine when the compensated leave was earned, and when or whether the leave was used or cashed out, with the following exceptions:

(a) As otherwise provided in ((WAC 415-108-530 and)) *Bowles v. Department of Retirement Systems*, 121 Wn.2d 52 (1993); and

(b) The employer has in place a regulation, charter provision, ordinance, collective bargaining agreement, or other comparable written policy statement which clearly delineates when the cashed out leave was accrued, or a different method of accounting for the accrual and use of leave, and, if applicable, compensation for unused leave and the same such method is consistently applied in each instance and for all purposes.

Any employer's policy which is not consistent for all purposes which is contained in a regularly negotiated labor agreement in effect on the effective date of this section will be honored until the expiration date of the agreement not including any extensions at which time it will be brought into compliance with this section. Any employer's policy which is not consistent for all purposes which is established by the employer shall be brought into compliance within sixty days of the effective date of this section. In the event an employer fails to come into full compliance with this section by the dates established herein, the department will treat cashed out leave on the same basis as the employer has established for using leave.

(3) A cash out of leave which is not annual leave as defined under WAC 415-108-010, shall be treated by the department as "any other form of leave" under RCW 41.50.150(2). The department shall bill the employer for any such leave cash out as excess compensation under RCW 41.50.150.

(4) For purposes of determining average final compensation and excess compensation, hours of leave earned by a member shall be considered for all purposes in the form in which it was earned. The department shall disregard any conversion of leave by an employer from one form to another and bill the employer for the amount converted as excess compensation pursuant to RCW 41.50.150.

AMENDATORY SECTION (Amending WSR 91-21-083, filed 10/18/91, effective 12/31/91)

WAC 415-108-520 Membership exceptions—Student and spouse of student. (1) A person employed by a Washington state institution of higher education or community college (employer), who is employed at such institution or college primarily for the purpose of furthering her/his education or the education of the person's spouse, is excepted from membership in PERS when:

(a) The person is a full-time student or the spouse of a full-time student; and

(b) The person is employed at the same institution where she/he is a full-time student or where the person's spouse is a full-time student; and

(c) The person determines her/his employment is primarily an incident to and in furtherance of her/his education or training, or the education or training of the person's spouse.

(2) For purposes of this section, RCW ((41.40.120)) 41.40.023(7) shall be administered as follows:

(a) When a person begins employment in a PERS eligible position, a determination shall be made by the person as to whether the provisions of this section apply. If this section applies to the person, she/he shall determine her/his membership status as either being excepted from membership in PERS, or being a member of PERS, based upon whether employment at the institution of higher education or community college is primarily as an incident to and in furtherance of her/his education or training, or the education or training of the person's spouse. The person shall notify the employer in writing of her/his determination of membership status no later than two months after commencing employment in a PERS eligible position. Based upon the provisions herein and the written notification of status, the person shall either be excepted from membership in PERS or become a member of PERS. In the event that no written notification of status is provided to the employer, based upon the provisions of this section, the employer shall make the presumption:

(i) That the person shall remain a member of PERS where the person is employed in a PERS eligible position and is a member of PERS at the time the person, or his or her spouse, becomes a full-time student;

(ii) That the person shall be excepted from PERS membership where the person or the person's spouse is a full-time student at the time of becoming employed in a PERS eligible position.

(b) A person employed in a PERS eligible position at the time of becoming a full-time student or becoming the spouse of a full-time student, shall remain a member of PERS; except, at the time of becoming a full-time student or becoming the spouse of a full-time student, the person may elect to waive her/his membership in PERS, based upon the provisions of this section excepting membership. The person must provide written notification of the waiver to the employer. If the person elects to waive membership in PERS, she/he cannot later elect membership in PERS unless there is a change of status of the person or of the person's spouse, as set forth below, and the employer has received written notification from the person of the change of status.

(c) A person who is a full-time student or who is the spouse of a full-time student at the time of becoming employed in a PERS eligible position, shall not be eligible for membership in PERS; except, at the time of becoming employed in a PERS eligible position, the person may elect to become a member of PERS, based upon the person's determination that the provisions of this section excepting membership do not apply. The person must provide written notification of the election to be a member of PERS to the employer. If the person elects to become a member of PERS, she/he cannot later waive PERS membership unless there is a change of status of the person or of the person's spouse, as set forth below, and the employer has received written notification from the person of the change of status.

(d) For purposes of this section, status is defined as:

(i) Student status - is full-time student, part-time student or nonstudent. Part-time student and nonstudent status do not meet the threshold for exception from PERS; only full-time student status meets the threshold:

(ii) Employment status - is employment in a PERS eligible position, employment in a PERS ineligible position, or unemployment. Unemployment refers to termination of employment from a Washington state institution of higher education or community college employer;

(iii) Marital status - is single, married, widowed or divorced.

(3) The department shall rely upon the institutions of higher education and community college employers to:

(a) Notify each person, at the time of hire, of the provisions of this section;

(b) Request all written notifications from persons electing membership or waiving membership under this section;

(c) Retain and make available to the department upon request, all written notifications electing membership or waiving membership on a sixty-four year record retention schedule.

(4) It is recommended, but not required, that no less than annually employers provide notice that employees are required to notify the employer of any change in status as set forth in this section.

AMENDATORY SECTION (Amending WSR 95-22-006, filed 10/18/95, effective 11/18/95)

WAC 415-108-485 Vehicle allowances—Are vehicle allowances earnable compensation? (1) If your employer provides you any payment or allowance in lieu of a reimbursement for expenses you incur or expect to incur in performing services for your employer, the payment or allowance is not compensation earnable. Your vehicle allowance does not qualify as compensation earnable if you receive the allowance in lieu of reimbursement for expenses that you incur or expect to incur in using your own vehicle for business purposes. ((See WAC 415-108-450(3)(e) and 415-108-460(3)(g).))

(2) The department presumes that any vehicle allowance provided to you by your employer is a payment in lieu of reimbursement for expenses and is not compensation earnable. If the contract authorizing your vehicle allowance states that it is provided solely in lieu of reim-

bursement for expenses that you incur or expect to incur in using your own vehicle for business purposes, the department's presumption is not rebuttable.

(3) **Your vehicle allowance may qualify as compensation earnable to the extent that it exceeds your actual expenses.** If your employer documents that your vehicle allowance exceeds the actual expenses you incur in driving your own vehicle for business purposes, the excess amount is compensation earnable. Your employer must maintain monthly contemporaneous records documenting the following:

(a) The dates, if any, on which you used a privately owned vehicle in performing services for your employer;

(b) The miles you drove the vehicle on each of these trips; and

(c) Your itinerary for each of these trips.

(4) **How to determine what amount of your vehicle allowance, if any, is reportable as compensation earnable.** If your employer documents that your vehicle allowance exceeds the actual expenses you incur in using your own vehicle for business purposes, your employer must report to the department as compensation earnable:

Your Vehicle Allowance LESS (Miles X IRS Rate)

(a) "Miles" above means the number of miles you drove a privately owned vehicle for business purposes during the month.

(b) "IRS rate" above means the Internal Revenue Service mileage rate for use by taxpayers computing the value of the use of a vehicle.

(5) **Your vehicle allowance qualifies as compensation earnable if you also receive a separate reimbursement for each occasion you use your own vehicle for business purposes.** If, in addition to your vehicle allowance, you receive a separate reimbursement for vehicle expenses for each occasion that you use a privately owned vehicle for business purposes, your vehicle allowance is compensation earnable.

(6) **Any part of your vehicle allowance that qualifies as earnable compensation is excess compensation.** If any part of your vehicle allowance is included in the calculation of your retirement allowance, your employer will be billed for excess compensation under RCW 41.50.150. Your employer's bill will equal the total estimated cost of the portion of your retirement allowance payment attributable to your vehicle allowance.

AMENDATORY SECTION (Amending Order IV, filed 2/15/78)

WAC 415-112-100 Minimum requirement for membership. With respect to members of TRS Plan I only, ninety calendar days of employment within a fiscal year as a full-time teacher, or the equivalent of ninety days of service within a fiscal year as a teacher employed on a part-time, occasional, hourly, or daily basis, shall be required, together with necessary contributions, before membership in the teachers' retirement system is established and before the director may approve an application for cancellation of

exemption, for the granting of additional credit for previous service, or for the payment of any benefit.

AMENDATORY SECTION (Amending Order IV, filed 2/15/78)

WAC 415-112-270 Evaluating credit for professional preparation. If a TRS Plan 1 member is otherwise eligible, professional preparation credit may be allowed for additional study at an institution of higher learning, or at a commercial or technical school where the courses supplement the member's professional preparation. Thirty-six quarter hours of credit, or the equivalent, shall be considered a year's work. Any less credits shall be evaluated as a fractional part of a year.

AMENDATORY SECTION (Amending Order IV, filed 2/15/78)

WAC 415-112-290 Credit for out-of-state service. (1) A TRS Plan 1 member who leaves Washington public school service and terminates his membership in the teachers' retirement system by lapsation or withdrawal and who subsequently returns to service and membership may establish or reestablish only such credit for out-of-state service as may be credited under the laws in effect at the time when he reestablishes membership.

(2) Effective July 1, 1964, a new ((member)) or ((a)) former TRS Plan 1 member who returns to membership after his former membership was cancelled by lapsation or withdrawal may not establish or reestablish out-of-state prior service credit of any kind, including out-of-state prior service credit for teaching, professional preparation, or military service.

(3) Out-of-state membership service credit, regardless of when the service was rendered, may be established or reestablished after July 1, 1964, within the limitations of existing law, only if the out-of-state service was rendered while the member was on official leave of absence granted by a state of Washington employer.

AMENDATORY SECTION (Amending Order 79-02, filed 9/10/79)

WAC 415-112-400 Salary deductions required by employer. ((1) Plan I.)

(a) Salary deductions for retirement shall be made from the beginning of the employment of every teacher employed full time (four-fifths or more) when the employment contract of such teacher calls for ninety or more days of employment in a school year. Salary deductions for retirement shall be required for every member employed full time when his employment contract calls for twenty or more days of employment in a school year.

(b)) When does the employer deduct salary for retirement contributions?

If the teacher or member is entitled to have salary deducted for retirement contributions, the employer must make the deductions when the teacher or member starts work.

(1) Plan 1.

(a) The employer must deduct salary for retirement contributions for a teacher who has not been a member if:

(i) They are employed full time (at least four-fifths of a school day or full time assignment); and

(ii) Their employment contract calls for at least ninety days of employment in a school year.

(b) The employer must also deduct the salary of each teacher who is a member employed full time if their employment contract calls for at least twenty days of employment in a school year.

(c) If a teacher who is not a member is employed for less than ninety days in a school year, ((and thus)) they will fail((s)) to establish membership((, any)). The employer must refund their salary deductions for retirement ((shall be refunded in full upon termination of his)) when they terminate employment as a teacher ((and upon filing)). The non-member must file a refund application with the department before they can receive the refund.

(d) If a member is employed by an employer for less than twenty days in a school year, ((any)) the employer must refund all salary deductions for retirement based on service during that year ((shall be refunded in full upon termination of his employment for that year and the filing of)) at the time the member terminates for the year. The nonmember must file a refund application with the department before they can receive the refund.

(2) Plan ((H)) 2.

(a) ((Salary deductions for retirement shall be made from the beginning of the employment of every teacher employed full time (four-fifths or more) when the employment contract of such teacher calls for ninety or more days of employment in a school year.)) The employer must deduct salary for retirement contributions for a teacher if:

(i) They work at least eight hundred ten hours for nine or more months between September and August of the following year; and

(ii) Their employment contract calls for at least ninety days of employment in a school year.

(b) If a teacher who is not a member is employed for less than ninety days in a school year, ((and thus)) they will fail((s)) to establish membership((, any)). The employer must refund their salary deductions for retirement ((shall be refunded in full upon termination of his)) when they terminate employment as a teacher ((and upon filing)). The non-member must file a refund application with the department before they can receive the refund.

AMENDATORY SECTION (Amending WSR 91-21-084, filed 10/18/91, effective 11/18/91)

WAC 415-112-515 When a member of the teacher's retirement system Plan ((I)) 1 enters retirement status. A member of the teacher's retirement system Plan ((I)) 1 enters retirement status when he or she:

(1) Has terminated all public school employment in the state of Washington;

(2) Has no written agreement to return to public school employment; and

(3) Has ((received his or her first monthly retirement payment)) made application and the accrual date has been determined.

AMENDATORY SECTION (Amending Order IV, filed 2/15/78)

WAC 415-112-520 Date from which service retirement allowance accrues. (((1) Upon approval by the board of trustees of an application for service retirement, the teachers' retirement allowance shall accrue from the first of the month following that in which a member terminated public school service, unless a full year of Washington service credit is established for the school year in which a member retires, in which case the date of accrual of his retirement allowance shall be July 1st following the member's final year of service. In no case shall the accrual date be prior to the first of the month following that in which proof and payment are received to establish membership or additional service credit.

(2) If a member terminates public school employment prior to eligibility for a service retirement allowance and at some future date qualifies for a deferred retirement allowance on the basis of age, the accrual date of such member's retirement allowance shall be the date on which the member reaches the minimum age required for such an allowance, provided the member is not employed in public education at the time. (Cross reference: WAC 415-112-620)) **When does my retirement allowance become payable?**

(1) The department must receive proof and payment to establish membership or additional service credit before your retirement allowance will be payable. After the department receives the necessary proof and payment and approves your application for service retirement, your retirement allowance is payable on:

(a) July 1 following your final year of service if you established a full year of Washington service credit for the year in which you retired; or

(b) The first of the month following the month that you terminated public school service.

(2) If you terminate public school employment before you are eligible for a service retirement allowance, you may later qualify for a deferred retirement allowance based on your age if you are not employed in public education. If you qualify, your retirement allowance is payable on the date you reach the minimum age required to start receiving payments.

AMENDATORY SECTION (Amending Order IV, filed 2/15/78)

WAC 415-112-600 Eligibility for temporary disability benefits. A member of the teachers' retirement system shall be covered for benefits under the temporary disability program only while employed on a full-time basis. ((The disability premium paid by a member during one school year shall afford disability protection until the beginning of the regular school term the following school year.)) Full-time employment during one school year shall afford disability protection until the beginning of the regular school term of the following school year.

AMENDATORY SECTION (Amending Order IV, filed 2/15/78)

WAC 415-112-700 Determining dependency under RCW 41.32.520. ((In order for a beneficiary under RCW 41.32.520 to qualify as the dependent of a deceased member, the following conditions shall prevail:

(1) The deceased member shall have provided financial support for the beneficiary to the extent of one half or more of reasonable living expense. Such financial support shall have been in effect at the time of the member's death and shall have been reasonably continuous prior to that time;)) To qualify as a dependent of a deceased member under the authority of RCW 41.32.520 the individual must provide proof of the following conditions:

(1) The beneficiary must receive one-half or more of their financial support from the deceased member. Such support must have been continuous prior to death and in effect at the time of the member's death.

(2) The term "financial support" shall include the cost of food, clothing, shelter, education, medical and dental expenses, and other similar expenses.

AMENDATORY SECTION (Amending Order IV, filed 2/15/78)

WAC 415-112-710 ((Accrual date of survivor benefits under RCW 41.32.520.)) When are survivor benefits payable? (1) ((The accrual date of a monthly survivor benefit under RCW 41.32.520(1) shall be the date following the date of the member's death or the fiftieth birthday of the beneficiary if the latter follows the date of the member's death.

(2) The accrual date of a survivor retirement allowance under RCW 41.32.520(2) shall be the day following the date of death of the member who was eligible for retirement, unless the deceased member had established a full year of service credit for his final year of service, in which case the effective date of the survivor retirement allowance shall be July 1st of the ensuing fiscal year. In all cases the rate of the annuity benefit shall be computed as of the date following the date of)) If there is a named beneficiary, monthly survivor benefits under RCW 41.32.520(1) are payable on the later of the following two dates:

(a) The day after the member's death; or

(b) The beneficiary's fiftieth birthday.

(2) If there is no named beneficiary, the survivor retirement allowance under RCW 41.32.520(2) is payable on:

(a) July 1st of the first fiscal year after the member's death if the deceased established a full year of service credit for their final year of service; or

(b) The day after the death of a member eligible for retirement.

In all cases the rate of the annuity benefit will be computed as of the day after the member's death.

AMENDATORY SECTION (Amending WSR 96-01-047, filed 12/14/95, effective 1/14/96)

WAC 415-112-725 Married member's benefit selection—Spousal consent required. (1) A member, if married,

must provide the spouse's written consent to the option selected under WAC 415-112-727. If a married member does not provide spousal consent, the department will pay the retired member a joint and fifty percent survivor benefit allowance and record the member's spouse as the survivor, in compliance with RCW 41.32.530(2) and 41.32.785(2).

(2) Spousal consent is not needed to enforce a marital dissolution order requiring the department to pay an ex-spouse under RCW 41.50.790.

(3) "Spousal consent" means that the married member's spouse consents to the retirement option selected by the member. The spouse's notarized signature on a completed retirement application constitutes spousal consent.

AMENDATORY SECTION (Amending WSR 96-01-047, filed 12/14/95, effective 1/14/96)

WAC 415-112-727 Retirement benefit options. RCW 41.32.530 (Plan ((I)) 1) and RCW 41.32.785 (Plan ((H)) 2) enable the department to provide retiring members with four retirement benefit options. In addition, retiring Plan ((I)) 1 members may select the COLA (cost-of-living adjustment) option. The retiring member must choose an option(s) when applying for service or disability retirement.

(1) Benefit options without survivor feature.

(a) Maximum benefit allowance. Plan ((I)) 1 retirees may elect to receive the maximum benefit possible which is based on a single life annuity. The maximum benefit allowance does not include a survivor allowance or beneficiary payment. When the retiree dies, all benefits cease. Any remaining balance in employee contributions is retained by the retirement system.

(b) Option One (standard allowance). The department pays a monthly retirement allowance based on a reduced single life annuity of the member, as provided in RCW 41.32.480 (Plan ((I)) 1 -Service), RCW 41.32.550 (Plan ((I)) 1 - Disability), RCW 41.32.765 (Plan ((H)) 2 -Service), or RCW 41.32.790 (Plan ((H)) 2 -Disability). When the retiree dies, all benefits cease. Any remaining balance of the member's accumulated contributions will be paid to:

- (i) The retiree's designated beneficiary; or if none, to
- (ii) The retiree's surviving spouse; or if none, to
- (iii) The retiree's legal representative.

A member selecting Option One must designate a beneficiary at the time of retirement by filing a completed and notarized form provided by the department.

(2) **Benefit options with a survivor feature.** A retiring member is allowed to select from several retirement options which create an actuarially equivalent benefit that includes a survivor feature. The survivor feature entitles the survivor to receive a monthly allowance after the retiree dies. If the member chooses one of the survivor options, the monthly benefit the member will receive is actuarially reduced to offset the cost of the survivor feature. After the retiree dies, the

department pays the survivor an allowance for the duration of his or her life. If the retiree and the survivor both die before the retiree's accumulated contributions are exhausted, the remaining balance is retained in the retirement fund.

(a) Option Two (joint and whole allowance). When the retiree dies, the department pays the survivor a retirement allowance equal to the gross monthly allowance received by the retiree.

(b) Option Three (joint and one-half allowance). When the retiree dies, the department pays the survivor an allowance equal to one-half of the retiree's gross monthly retirement allowance.

(c) Option Four (joint and two-thirds allowance).

(i) This subsection applies to members retiring on or after January 1, 1996.

(ii) When the retiree dies, the department pays the survivor an allowance equal to two-thirds (66.667%) of the retiree's gross monthly retirement benefit allowance.

(3) If a member retires on or after June 6, 1996, the department is required to pay an ex-spouse survivor benefits pursuant to a marital dissolution order that complies with RCW 41.50.790.

(4) **Supplemental COLA option for Plan ((I)) 1 members.** Retiring Plan ((I)) 1 members may select an annual cost-of-living adjustment (COLA) option in addition to their choice of retirement benefit options listed above in subsections (1) and (2) of this section. Retiring members who choose this supplemental option will have their monthly retirement allowance actuarially reduced to offset the cost of annual adjustment.

((4)) (5) Benefit increases when survivor predeceases retiree (pop-up provision).

(a) This section applies to members retiring on or after January 1, 1996, who select Option Two, Three, or Four.

(b) Plan ((I)) 1 members. If the survivor dies before the retiree, the retiree's monthly retirement allowance increases, effective the first day of the following month, to:

(i) The amount that would have been received had the retiree chosen the maximum benefit, minus;

(ii) Any reduction in the maximum allowance resulting from a withdrawal of contributions, plus;

(iii) Any cost-of-living adjustments the retiree received prior to the survivor's death based on the original option selection.

(c) Plan ((H)) 2 members. If the survivor dies before the retiree, the retiree's monthly retirement allowance increases, effective the first day of the following month, to:

(i) The amount that would have been received had the retiree chosen the standard allowance; plus

(ii) Any cost-of-living adjustments the retiree received prior to the survivor's death based on the original option selection.

(d) Pop-up recalculation example.

Plan One:

Lucinda retires from TRS Plan ((I)) 1 in 1996 (Year 0) with \$55,000 in accumulated contributions. As a TRS ((I)) 1 member she is allowed to withdraw some or all of her contributions when she retires. She decides to withdraw \$5,000 so she and Garth, her husband, can take a cruise. This will actuarially reduce Lucinda's maximum benefit from \$2,000 per month to \$1,963.86. Lucinda would also like Garth to receive a monthly allowance after she dies. Therefore, Lucinda chooses one of the benefit

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options with a survivor feature. As a result, her monthly allowance is further actuarially reduced from \$1,963.86 to \$1,846.03. Unfortunately, Garth dies in January 2001 (Year 5). Under the "pop-up" provision, Lucinda's monthly benefit will increase to \$1,963.86, the amount she would have received had she chosen the maximum benefit (after reduction for her withdrawals). If Lucinda selected the COLA option or if she has otherwise become eligible for a COLA, the accumulated COLAs (based on the prior benefit allowance) will be added to the \$1,963.86*.

Plan Two:

Agnes retires from TRS Plan ((H)) 2 in 1996 (Year 0). She would like Beatrice, her daughter, to receive a monthly allowance after Agnes dies. Therefore, Agnes selects a retirement benefit option with a survivor feature. As a result her monthly allowance is reduced from \$2,000 (standard allowance) to \$1,750. Unfortunately, Beatrice dies in January 2001 (Year 5). Under the "pop-up" provision, Agnes' monthly benefit will increase to the amount she would have received had she chosen Option One (standard allowance) plus her accumulated COLA's:

Year	Option One (Standard Allowance)	Survivor Option (2,3,4) plus COLAs	COLA incr. (3% max)	\$ Increase
0 (1996)	2,000.00	1,750.00	(inelig.)	0.00
1 (1997)		1,750.00	.02	35.00
2 (1998)		1,785.00	.03	53.55
3 (1999)		1,838.55	.025	45.96
4 (2000)		1,884.51	.03	56.54
5 (2001)	2,000.00	1,941.05	—	—
Total COLA's				191.05
Original Option One Benefit Amount		+Total COLA's	=New Benefit Amount	
\$2000		+\$191.05	=\$2,191.05*	

*In the future (i.e., 2001 or Year 5), COLAs will be based on the increased benefit amount.

(e) If the survivor dies and the retiree's benefit increases under this section, and thereafter the retiree also dies before all contributions are exhausted, the remaining balance is retained by the retirement fund.

~~((5))~~ (6) **Survivor.** For the purposes of this provision, "survivor" means a person nominated by the member to receive a monthly benefit allowance after the member dies. A member nominates the survivor at the time of retirement by filing a completed and notarized form provided by the department.

if you receive the allowance in lieu of reimbursement for expenses that you incur or expect to incur in using your own vehicle for business purposes. ((See WAC 415-112-410 (3)(e) and 415-112-411 (3)(g).))

(2) The department presumes that any vehicle allowance provided to you by your employer is a payment in lieu of reimbursement for expenses and is not earnable compensation. If the contract authorizing your vehicle allowance states that it is provided solely in lieu of reimbursement for expenses that you incur or expect to incur in using your own vehicle for business purposes, the department's presumption is not rebuttable.

(3) Your vehicle allowance may qualify as earnable compensation to the extent that it exceeds your actual expenses. If your employer documents that your vehicle allowance exceeds the actual expenses you incur in driving your own vehicle for business purposes, the excess amount is earnable compensation. Your employer must maintain monthly contemporaneous records documenting the following:

(a) The dates, if any, on which you used a privately owned vehicle in performing services for your employer;

(b) The miles you drove the vehicle on each of these trips; and

(c) Your itinerary for each of these trips.

(4) How to determine what amount of your vehicle allowance, if any, is reportable as earnable compensation. If your employer documents that your vehicle allowance exceeds the actual expenses you incur in using your own

AMENDATORY SECTION (Amending Order 87-09, filed 10/7/87)

WAC 415-112-800 Scope. WAC 415-112-800 through 415-112-820 govern the application of RCW 41.32.010 ((415-112-800)) (10)(a)(ii), as amended by section 1, chapter 265, Laws of 1987 and by section 2, chapter 265, Laws of 1987, and shall apply only to persons who became members prior to October 1, 1977.

AMENDATORY SECTION (Amending WSR 95-22-006, filed 10/18/95, effective 11/18/95)

WAC 415-112-41301 Vehicle allowances—Are vehicle allowances earnable compensation? (1) If your employer provides you any payment or allowance in lieu of a reimbursement for expenses you incur or expect to incur in performing services for your employer, the payment or allowance is not earnable compensation. Your vehicle allowance does not qualify as earnable compensation

vehicle for business purposes, your employer must report to the department as earnable compensation:

Your Vehicle Allowance LESS (Miles X IRS Rate)

(a) "Miles" above means the number of miles you drove a privately owned vehicle for business purposes during the month.

(b) "IRS rate" above means the Internal Revenue Service mileage rate for use by taxpayers computing the value of the use of a vehicle.

(5) Your vehicle allowance qualifies as earnable compensation if you also receive a separate reimbursement for each occasion you use your own vehicle for business purposes. If, in addition to your vehicle allowance, you receive a separate reimbursement for vehicle expenses for each occasion that you use a privately owned vehicle for business purposes, your vehicle allowance is earnable compensation.

(6) Any part of your vehicle allowance that qualifies as earnable compensation is excess compensation. If any part of your vehicle allowance is included in the calculation of your retirement allowance, your employer will be billed for excess compensation under RCW 41.50.150. Your employer's bill will equal the total estimated cost of the portion of your retirement allowance payment attributable to your vehicle allowance.

**WSR 99-11-024
PROPOSED RULES
DEPARTMENT OF AGRICULTURE**

[Filed May 13, 1999, 8:47 a.m.]

Continuance of WSR [99-07-108].

Preproposal statement of inquiry was filed as WSR 98-23-087.

Title of Rule: Washington state red raspberry grade, labeling and handling standards.

Purpose: Allow the Red Raspberry Commission to implement rules and regulations for uniform labeling of red raspberries marketed, sold or processed within Washington state.

Statutory Authority for Adoption: RCW 15.65.280, 15.65.380.

Statute Being Implemented: RCW 15.65.330(1).

Summary: The rules will establish standards in packaging and labeling to ensure proper use of product in processing and preparation for marketing.

Reasons Supporting Proposal: The rules are necessary to maintain standards of quality for red raspberries grown in Washington.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Anne Seeger, 1323 Lincoln Street, #204, Bellingham, WA 98226, (360) 671-1437.

Name of Proponent: Washington Red Raspberry Commission, governmental.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fi-

cal Matters: The adoption of the rules will be in compliance with the provisions of chapters 15.65 and 34.05 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: The rules establish uniform handling standards and labeling.

In compliance with the marketing order for red raspberries (WAC 16-561-030 Marketing order purposes) these rules are necessary to maintain the quality of processed Washington-grown red raspberries while providing a safe product for the consumer.

Proposal does not change existing rules.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule will not impose more than minor costs on businesses in the raspberry industry. The rule will not increase cost in equipment, supplies, labor or administrative expenses.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The Washington State Department of Agriculture is not a listed agency in section 201.

Date of Intended Adoption: May 19, 1999.

May 12, 1999

Monte Maberry

President, Board of Directors

WSR 99-11-036

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed May 13, 1999, 2:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 98-16-062.

Title of Rule: Requirements for apprenticeship training waiver.

Purpose: To provide the Department of Health and the Board of Hearing and Speech with direction in the adjudication and processing of applications for hearing instrument fitting/dispensing licensing in which the applicant is requesting that the apprenticeship training requirement be waived.

Statutory Authority for Adoption: RCW 18.35.161(3).

Statute Being Implemented: RCW 18.35.040.

Summary: Applicants for hearing instrument fitter/dispenser licensure must have at least six months of apprenticeship training that meets the requirements established by the Board of Hearing and Speech. The board may waive all or part of the apprenticeship training in recognition of formal education in fitting and dispensing hearing instruments or in recognition of previous licensure in Washington or in another state, territory or the District of Columbia.

Reasons Supporting Proposal: A clear and consistent process for adjudicating requests for waiver of the apprenticeship requirement is necessary to allow fair and timely review of all applications.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Department of Health,

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Board of Hearing and Speech, 1300 Quince Street, Olympia, WA, (360) 236-4916.

Name of Proponent: Self Help for the Hard of Hearing, private and public.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: RCW 18.35.040 (1)(b) allows the Board of Hearing and Speech to waive the required apprenticeship training for hearing instrument fitter/dispensers in recognition of formal education in fitting and dispensing hearing instruments or in recognition of previous licensure in Washington or in another state, territory or the District of Columbia. The rule establishes an adjudication process for applications in which the applicant is requesting waiver of the required apprenticeship training.

Proposal does not change existing rules.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no disproportionate effect on small and large entities.

RCW 34.05.328 does not apply to this rule adoption. The rule does not subject a person to a penalty or sanction; does not establish, alter or revoke a qualification or standard for licensure; and does not make significant amendments to a policy or regulatory program. This rule identifies the process for reviewing request for waiver of the apprenticeship training as required by RCW 18.35.040 (1)(b).

Hearing Location: Yakima Valley Community College, 16th Avenue and Nob Hill Boulevard, Yakima, Washington, on August 13, 1999, at 9:00 a.m.

Assistance for Persons with Disabilities: Contact Betty Bird by July 23, 1999, TDD 1-800-525-0127, or (360) 236-4916.

Submit Written Comments to: Diane Young, Department of Health, P.O. Box 47869, Olympia, WA 98504-7869, fax (360) 236-4918, by August 13, 1999.

Date of Intended Adoption: August 13, 1999.

March 23, 1999

Sheila Winkler, Chair
Board of Hearing and Speech

NEW SECTION

WAC 246-828-061 Requirements for apprenticeship training waiver. Requests to the board to waive all or part of the required apprenticeship training "in recognition of formal education in fitting and dispensing of hearing instruments or in recognition of previous licensure in Washington or in another state, territory or the District of Columbia" as defined in RCW 18.35.040 (1)(b) will be reviewed as follows:

(1) The board may waive part or all of the apprenticeship training in recognition of formal education in hearing instrument technology that is a certificate program at least six months in duration and is governed under the Washington state board of community and technical colleges or the equivalent agency in another state, territory, or the District of Columbia. The program must include instruction in all subject areas listed in WAC 246-828-070(2).

(2) The board may waive part or all of the apprenticeship training in recognition of:

(a) Current licensure or certification in Washington or in another state, territory, or the District of Columbia for a minimum of two years in good standing; or

(b) Previous licensure or certification, in good standing that has not been inactive for more than five years.

(3) Applicants requesting that the apprenticeship training requirement be waived that do not meet the criteria of subsection (1) or (2) of this section will be denied.

WSR 99-11-046

PROPOSED RULES

SPOKANE COUNTY AIR POLLUTION CONTROL AUTHORITY

[Filed May 17, 1999, 11:24 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 70.94.141(1).

Title of Rule: SCAPCA Regulation I, Section 10.11, Oxygenated Gasoline.

Purpose: Establishes fees for blenders of oxygenated gasoline for sale in the Spokane County control area.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141.

Summary: The annual fees for oxygenated gasoline blenders are being adjusted.

Reasons Supporting Proposal: The annual fees are being lowered to more accurately match program costs.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kelle R. Vigeland, 1101 West College, #403, Spokane, WA 99201, (509) 477-4727, ext. 106.

Name of Proponent: Spokane County Air Pollution Control Authority (SCAPCA), governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: This rule authorizes SCAPCA to assess annual fees for blenders of oxygenated gasoline that is to be sold within the Spokane County control area. The money collected through the fees funds the compliance program which helps ensure the oxygenated gasoline requirements in chapter 173-492 WAC and SCAPCA Regulation I, Section 6.16 are met.

Proposal Changes the Following Existing Rules: The proposed change lowers oxygenated gasoline blenders fees to more accurately match program costs.

No small business economic impact statement has been prepared under chapter 19.85 RCW. SCAPCA is not subject to the small business economic impact provision of the Administrative Procedure Act.

RCW 34.05.328 does not apply to this rule adoption. Pursuant to RCW 70.94.141(1), RCW 34.05.328 does not apply to this rule adoption.

Hearing Location: Hearing Room Lower Level, Spokane County Public Works, 1026 West Broadway, Spokane, WA 99201, on July 1, 1999, at 8:30 a.m.

Submit Written Comments to: Kelle R. Vigeland, Spokane County Air Pollution Control Authority, 1101 West

College, #403, Spokane, WA 99201, fax (509) 477-6828, by June 29, 1999.

Date of Intended Adoption: July 1, 1999.

May 14, 1999
Kelle R. Vigeland
Environmental Engineer

Small Volume	(<100,000 Gallons/Month)	(\$500) <u>\$170</u>
Medium Volume	(100,000 to <1,000,000 Gallons/Month)	(\$1,000) <u>\$335</u>
Large Volume	(1,000,000 to <15,000,000 Gallons/Month)	(\$6,200) <u>\$2,070</u>
Very Large Volume	(>=15,000,000 Gallons/Month)	(\$15,500) <u>\$5,170</u>

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 99-11-050
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

[Filed May 17, 1999, 2:30 p.m.]

The Department of Social and Health Services is withdrawing WAC 388-550-4500 filed under WSR 99-09-091 on April 21, 1999. This WAC was inadvertently filed with the existing text of the WAC. The department will refile a CR-102 with the amended text.

Marie Myerchin-Redifer, Manager
Rules and Policies Assistance Unit

WSR 99-11-052
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Medical Assistance Administration)

[Filed May 17, 1999, 2:37 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 99-06-085.

Title of Rule: WAC 388-502-0220 Administrative appeals—Rates—Contractor/provider and 388-550-5600 Hospital rate appeals and disputes.

Purpose: To comply with the Governor's Executive Order 97-02 which mandates that rules be reviewed and rewritten as necessary to ensure clarity, compliance with law, necessity, avoidance of duplication, etc. The rules are being rewritten to clarify the department's rate reimbursement appeal process.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.730.

Statute Being Implemented: RCW 74.08.090, 74.09.210, 74.09.730.

AMENDATORY SECTION (Amending WSR 93-19-043, filed 9/8/93)

SCAPCA Regulation I, Section 10.11 Oxygenated gasoline Pursuant to Chapter 173-492 WAC, the following annual fees shall be paid by blenders of oxygenated gasoline for sale in the Spokane Control Area.

(\$500) \$170
(\$1,000) \$335
(\$6,200) \$2,070
(\$15,500) \$5,170

Summary: WAC 388-502-0220 Administrative appeals—Rates—Contractor/provider, has been rewritten to clarify the department's rate reimbursement appeal process.

WAC 388-550-5600 Hospital rate appeals and disputes, reflects the same basic process and applies it to hospitals; it is being amended to refer the user to WAC 388-502-0220 to avoid duplication of WAC.

Reasons Supporting Proposal: To comply with the Governor's Executive Order 97-03 and to reduce duplication of WAC.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Thaivan Nguyen, DOSS, 623 8th Avenue S.E., Olympia, WA 98501, (360) 586-6697.

Name of Proponent: Department of Social and Health Services, Medical Assistance Administration, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 388-502-0220 states the department's rate reimbursement appeal process for contractor/providers and WAC 388-550-5600 applies the same appeal process to hospitals.

The purpose of the rule is to clearly explain what contractor/providers and hospitals must do to appeal a department reimbursement rate, and what the appeal process consists of.

The anticipated effects are that by stating the requirements and procedures clearly, department staff and vendors will be able to understand the process, and work together for informal resolution of appeals and disputes, avoiding possible costly and lengthy litigation.

Proposal Changes the Following Existing Rules: The proposed rule amends the rules listed above to clarify the rate reimbursement appeal process for both provider/contractors and hospitals. The existing chapter that describes the hospital rate appeal process (WAC 388-550-5600) is being significantly amended to eliminate restating the process and refers the reader to WAC 388-502-0220 Administrative appeals—Rates—Contractor/providers.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed amendments and concluded that no new costs will be imposed on the providers affected by them.

RCW 34.05.328 applies to this rule adoption. The rules do meet the definition of a significant legislative rule, and the department has prepared and evaluation of probable costs and

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probable benefits. A copy may be obtained by contacting the person listed in Name of Agency Personnel above.

Hearing Location: Lacey Government Center (behind Tokyo Bento Restaurant), 1009 College Street S.E., Room 104-B, Lacey, WA 98503, on June 22, 1999, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Paige Wall by June 11, 1999, phone (360) 902-7540, TTY (360) 902-8324, e-mail pwall@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, Paige Wall, Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 902-8292, by June 22, 1999.

Date of Intended Adoption: August 1, 1999.

May 13, 1999

Marie Myerchin-Redifer, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending Order 3732, filed 5/3/94, effective 6/3/94)

WAC 388-502-0220 Administrative appeal((—Rate—)) contractor/provider rate reimbursement. (1) ((Right to an administrative appeal.)) Any enrolled contractor/provider of medical services((, except nursing facilities governed by WAC 388-96-904, shall have)) has a right to an administrative appeal ((any time)) when the contractor/provider disagrees with the medical assistance administration's (MAA) reimbursement rate. The exception to this is nursing facilities governed by WAC 388-96-904.

(2) ((First level of appeal. A contractor/provider wishing to contest an action described in subsection (1) of this section files an appeal with the medical assistance administration (MAA).))

(a) Unless a written rate notification specifies otherwise, the department shall make retroactive rate adjustments only when a contractor/provider files a rate appeal. The rate appeal requesting retroactive rate adjustment shall be made within sixty calendar days after being notified of an action or determination the contractor/provider wishes to challenge. The notification date of an action or determination shall be the date of the written rate notification letter. The department shall not consider for retroactive adjustments, a contractor/provider rate adjustment appeal filed after the sixty day period described in this subsection.

(b) The appeal shall include a statement of the specific issue being appealed, supporting documentation, and a request for recalculation of the rate. MAA may request additional documentation to complete the review. MAA may conduct an audit of the documentation provided in order to complete the review.

(c) When a portion of a rate is appealed, MAA may review all components of the reimbursement rate.

(d) MAA shall issue a decision or request additional information within sixty calendar days of the receipt of the rate appeal request. When additional information is necessary, the contractor/provider shall have forty five calendar days to submit the information. MAA shall issue a decision within thirty calendar days of receipt of complete information.

(e) Unless the written rate notification specifies otherwise, increases in rates resulting from an appeal shall be effective retroactively to the effective date of the rate change. The appeal shall be filed within sixty calendar days after the written rate notification letter that the contractor/provider is challenging. Increases in rates, resulting from a rate appeal filed after the sixty day period described under (a) of this subsection, shall be effective the date the appeal is filed with MAA. Appeals resulting in rate decreases shall be effective on the date specified in the appeal decision notification. The effective date shall not be before the date of the appeal decision notification. Rate changes subject to the provisions of fraudulent practices as described under RCW 74.09.210 are exempt from these provisions.

(f) MAA may grant extensions of time at MAA's discretion if requested within the sixty day period referenced under (a) of this subsection. The first level of appeal. A contractor/provider who wants to contest a reimbursement rate must file a written appeal with MAA.

(a) The appeal must include all of the following:

- (i) A statement of the specific issue being appealed;
- (ii) Supporting documentation; and
- (iii) A request for MAA to recalculate the rate.

(b) When a contractor/provider appeals a portion of a rate, MAA may review all components of the reimbursement rate.

(c) In order to complete a review of the appeal, MAA may do one or both of the following:

- (i) Request additional information; and/or
- (ii) Conduct an audit of the documentation provided.

(d) MAA issues a decision or requests additional information within sixty calendar days of receiving the rate appeal request.

(i) When MAA requests additional information, the contractor/provider has forty-five calendar days from the date of MAA's request to submit the additional information.

(ii) MAA issues a decision within thirty calendar days of receipt of the completed information.

(e) MAA may adjust rates retroactively to the effective date of a new rate or a rate change. In order for a rate increase to be retroactive, the contractor/provider must file the appeal within sixty calendar days of the date of the rate notification letter from MAA. MAA does not consider any appeal filed after the sixty day period to be eligible for retroactive adjustment.

(f) MAA may grant a time extension for the appeal period if the contractor/provider makes such a request within the sixty-day period referenced under (e) of this subsection.

(g) Any rate increase resulting from an appeal filed within the sixty-day period described in subsection (2)(e) of this section is effective retroactively to the rate effective date in the notification letter.

(h) Any rate increase resulting from an appeal filed after the sixty-day period described in subsection (2)(e) of this section is effective on the date the rate appeal is received by the department.

(i) Any rate decrease resulting from an appeal is effective on the date specified in the appeal decision letter.

(j) Any rate change that MAA grants that is the result of fraudulent practices on the part of the contractor/provider as

described under RCW 74.09.210 is exempt from the appeal provisions in this chapter.

(3) The second level of appeal. When the contractor/provider disagrees with ((an adverse)) a rate review decision, ((the contractor/provider)) it may file a request for a dispute conference with ((the)) MAA. ((D)) For this section "dispute conference" ((for this section)) means an informal administrative hearing for the purpose of resolving contractor/provider disagreements with ((any of the)) a department action((s,)) as described under subsection (1) of this section, and not ((resolved)) agreed upon at the first level of appeal. The dispute conference is not governed by the Administrative Procedure Act, chapter 34.05 RCW.

(a) If a contractor/provider ((shall)) files a request for a dispute conference, it must submit the request to MAA within thirty calendar days ((following receipt of the adverse)) after the contractor/provider receives the rate review decision. ((The department shall)) MAA does not consider dispute conference requests submitted after the thirty-day period ((of)) for the first level decision ((date)).

(b) MAA ((shall)) conduct the dispute conference within ninety calendar days of ((the receipt of)) receiving the request.

(c) ((The)) A department-appointed conference chairperson ((shall)) issues the final decision within thirty calendar days of the conference. Extensions of time for extenuating circumstances may be granted if all parties agree.

(d) ((MAA may grant extensions of time for extenuating circumstances.

(e) The effective date of dispute conference decisions regarding rate changes shall be the same as specified under subsection (2)(e) of this section.

(f)) Any rate increase of decrease resulting from a dispute conference decision is effective on the date specified in the dispute conference decision.

(e) The dispute conference ((shall be)) is the final level of administrative appeal within the department and precede judicial action.

(4) MAA ((shall construe failure on the part of the)) considers that a contractor/provider who fails to attempt to resolve disputed rates as provided in this section ((as an abandonment of)) has abandoned the dispute.

AMENDATORY SECTION (Amending WSR 98-01-124, filed 12/18/97, effective 1/18/98)

WAC 388-550-5600 Administrative appeal for hospital rate ((appeals and disputes)) reimbursement. ((1)) A hospital may appeal any aspect of its Medicaid payment rates by submitting a written notice of appeal and supporting documentation to the medical assistance administration's (MAA) hospital reimbursement section, except that no administrative appeals may be filed challenging the method described herein.

(a) The grounds for rate adjustments include, but are not limited to:

((i)) Errors or omissions in the data used to establish rates; and

((ii)) Peer group change recommended by the Washington state department of health.

((b)) The department may require additional documentation from the provider in order to complete the appeal review. The department may conduct an audit and/or desk review if necessary to complete the appeal review.

((c)) Unless the written rate notification specifies otherwise, a hospital shall file an appeal within sixty days after being notified of an action or determination the hospital wishes to challenge. The department shall deem the notification date of an action or determination the date of the written rate notification letter.

((d)) A hospital which files an appeal within the sixty day period described in subsection (1)(e) of this section shall be eligible for retroactive rate adjustments if it prevails.

((e)) The department shall not consider a hospital rate appeal filed after the sixty day period described in this subsection for retroactive rate adjustments.

((f)) When a hospital appeals a rate the department may review all aspects of its rate.

((g)) Unless the written rate notification specifies otherwise, the department shall deem rate changes resulting from an appeal effective as follows:

((i)) Increases in rates resulting from an appeal filed within sixty days after the written rate notification letter that the hospital is challenging shall be effective retroactive to the date of the rate change specified in the original notification letter.

((ii)) Increases in rates resulting from a rate appeal filed after the sixty day period or exception period shall be effective on the date the appeal was filed with the department.

((iii)) A rate decrease resulting from an appeal shall be effective on the date specified in the appeal decision notification.

((2)) (a) A hospital may request a dispute conference to appeal an administrative review decision. The conference shall be conducted by the assistant secretary for the MAA or his/her designee.

((b)) The hospital shall submit a request for a conference within thirty days of receipt of the administrative review decision.

((c)) The department shall deem the dispute conference decision its final decision regarding rate appeals)) The hospital appeals and dispute process follows the procedures as stated in WAC 388-502-0220, Administrative appeal for contractor/provider rate reimbursement.

WSR 99-11-053

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Medical Assistance Administration)

[Filed May 17, 1999, 2:40 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 98-13-086.

Title of Rule: Repealing WAC 388-86-045 Home health services and 388-87-065 Payment—Home health agency.

Purpose: The department is establishing new chapter 388-551 WAC, Alternatives to hospital services to combine

PROPOSED

these alternative services into one chapter. Therefore, WAC 388-86-045 Home health services and 388-87-065 Payment—Home health agency, are being repealed, and the information will be incorporated into the new chapter.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.530.

Statute Being Implemented: 42 USC 1396a (10)(D), RCW 74.09.500.

Summary: The department is establishing new chapter 388-551 WAC to combine alternatives to hospital services into one chapter. Therefore, WAC 388-86-045 Home health services and 388-87-065 Payment—Home health agency, are being repealed and the information is incorporated into the new chapter. The new chapter reorganizes and clarifies the rules to comply with the Governor's Executive Order 97-02. The rules eliminate all preauthorization requirements for home health services, clarifies home health care, who is eligible, what types of services and expenses are not covered by the department, and allows vendors to provide certain types of plan of treatment information to MAA without purchasing new computer software or upgrading old software.

Reasons Supporting Proposal: To comply with the Governor's Executive Order 97-02. To combine alternatives to hospital services into one chapter.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Pam Robarge, RN/DHSQS, 805 Plum Street S.E., Olympia, WA 98501, (360) 753-2486.

Name of Proponent: Department of Social and Health Services, Medical Assistance Administration, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: The new chapter combines alternative to hospital services into one chapter. Home health services is a subchapter in the new chapter. The new subchapter incorporates current rule into new, reorganized sections and uses clearer language. The new subchapter clarifies home health care and eligibility, plan of treatment (POT) requirements, types of home health care and expenses that MAA does not cover, and allows vendors to provide certain POT information to MAA without purchasing new computer software or upgrading old software.

Proposal Changes the Following Existing Rules: The proposed rule repeals existing rules and combines them with other rules (hospice services) in a new chapter.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has reviewed this rule proposal and concludes that no new costs will be imposed on the businesses affected by it.

RCW 34.05.328 applies to this rule adoption. The rule does meet the definition of a significant legislative rule, and the department has prepared and evaluation of probable costs and benefits, which may be obtained by contacting Pam Robarge at the address listed in Name of Agency Personnel above.

Hearing Location: Lacey Government Center (behind Tokyo Bento), 1009 College Street S.E., Room 104-B, Lacey, WA 98503, on June 22, 1999, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Paige Wall by June 11, 1999, phone (360) 902-7540, TTY (360) 902-8324, e-mail pwall@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, Paige Wall, Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 902-8292, by June 22, 1999.

Date of Intended Adoption: August 1, 1999.

May 13, 1999

Marie Myerchin-Redifer, Manager
Rules and Policies Assistance Unit

SUBCHAPTER II—HOME HEALTH SERVICES

NEW SECTION

WAC 388-551-2000 Home health services—General.

The purpose of the medical assistance administration (MAA) home health program is to reduce the costs of health care services by providing equally effective, more conservative, and/or less costly treatment in a client's home.

Home health services consist of skilled nursing and **specialized therapies** provided in a client's **residence**. Home health aide services may be provided in addition to these services. The client must be **homebound**, as determined by documentation provided to MAA. Services provided are for acute, intermittent, short term, and intensive courses of treatment. See chapter 388-515 WAC for clients needing chronic, long-term maintenance care.

NEW SECTION

WAC 388-551-2010 Home health—Definitions.

Words and abbreviations in bold have the following definitions for this chapter. See also chapter 388-500 WAC for other definitions and abbreviations used by the department.

"Home health agency" means an agency or organization certified under Medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence.

"Home health services" mean skilled health care (nursing, specialized therapy, and home health aide) services provided in the client's residence on a part-time or intermittent basis by a Title XVIII Medicare and Title XIX Medicaid home health provider. See also WAC 388-551-2000.

"Homebound" means a physician has certified that the client is medically or physically not capable of leaving the client's residence, and MAA has determined, by reviewing available supporting documentation, that the client meets the requirements to receive home health services.

"Plan of treatment (POT)" (also known as **"plan of care (POC)"**) means a written plan of treatment that is established and periodically reviewed and signed by both a physician and a home health agency provider, that describes the home health care to be provided at the client's **residence**. See WAC 388-551-2210.

"Residence" means a client's home or place of living not including a hospital, skilled nursing facility, or residential facility with skilled nursing services available.

"Specialized therapy" means skilled therapy services provided to **homebound** clients which includes:

- (1) Physical;
- (2) Occupational; or
- (3) Speech/audiology services.

See WAC 388-551-2110.

NEW SECTION

WAC 388-551-2020 Home health services—Eligible clients. (1) Clients in the following MAA programs are eligible to receive **home health services** subject to the limitations described in this chapter. Chapter 388-551 WAC does not apply to clients enrolled in MAA's managed care plans.

- (a) Categorically needy program (CNP);
- (b) Limited casualty program - medically needy program (LCP-MNP);
- (c) General assistance expedited (GA-X) (disability determination pending); and
- (d) Medical care services (MCS) programs:
 - (i) General assistance - unemployable (GA-U); and
 - (ii) Alcoholism and drug addiction treatment and support act (ADATSA) (GA-W).

(2) Clients in the following emergency-only MAA programs are eligible to receive **home health services** subject to the limitations described in this chapter. Coverage is also limited to two skilled nursing visits per eligibility enrollment period. **Specialized therapy** services and home health aide visits are not covered:

- (a) Categorically needy program (CNP) - emergency-only.
- (b) Limited casualty program - medically needy program (LCP-MNP)-emergency only.

NEW SECTION

WAC 388-551-2100 Covered home health services—Nursing.

Nursing. (1) Skilled nursing services involve observation, assessment, treatment, teaching, training, management and/or evaluation requiring the skills of:

- (a) A registered nurse; or
- (b) A licensed practical nurse under the supervision of a registered nurse.

(2) MAA may pay for up to two skilled nursing visits per day. See WAC 388-551-2220(3), (4) and (5).

(3) Coverage for home health nursing services is limited to **homebound** clients, except as listed in subsection (4) of this section.

(4) MAA covers home health nursing services for non-homebound clients on a limited basis only when the client is unable to access similar services in a less costly setting, as documented by the provider and approved by MAA.

(5) A brief skilled nursing visit occurs when only one of the following activities is performed during a visit:

- (a) An injection or blood draw;
- (b) Placement of oral medications in containers (e.g., envelopes, cups, medisets); or
- (c) A prefill of insulin syringes.

(6) MAA may cover brief skilled nursing visits for a client with chronic needs, for a short time, until a long term care plan is implemented.

(7) MAA limits services provided to a client enrolled in either of the emergency medical programs listed in WAC 388-551-2020 (2)(a) and (b), to two skilled nursing visits within their eligibility enrollment period.

(8) To receive infusion therapy clients must:

(a) Be willing and capable of learning and managing their infusion care; or

(b) Have a caregiver willing and capable of learning and managing the client's infusion care.

(9) MAA covers infant phototherapy:

(a) For up to five skilled nursing visits per infant;

(b) When provided by a Medicaid approved infant phototherapy agency which has a copy of MAA's approval letter on file; and

(c) When the infant is diagnosed with hyperbilirubinemia.

(10) MAA covers limited high risk obstetrical services:

(a) For a medical condition that complicates pregnancy and may result in a poor outcome for the mother, unborn, or newborn;

(b) During the span of home health agency services, if enrollment in or referral to the following providers of First Steps has been verified:

(i) Maternity support services (MSS); or

(ii) Maternity case management (MCM);

(c) When provided by a registered nurse who has either:

(i) National prenatal certification; or

(ii) A minimum of one year of labor, delivery, and post-partum experience at a hospital within the last five years; and

(d) For up to three home health visits per pregnancy.

NEW SECTION

WAC 388-551-2110 Covered home health services—Specialized therapy. (1) MAA may pay for up to one specialized therapy visit per day, per type of specialized therapy.

(2) To receive specialized therapy services, a client must be **homebound**.

NEW SECTION

WAC 388-551-2120 Home health services—Aides.

(1) MAA may pay for up to one home health aide visit per day.

(2) MAA pays for home health aide services only when the services are provided under the supervision of and in conjunction with:

(a) Skilled nursing services; or

(b) Specialized therapy services.

(3) MAA covers home health aide services only when a registered nurse or licensed therapist visits the client's residence at least once every fourteen days to monitor or supervise home health aide services, with or without the presence of the home health aide.

PROPOSED

NEW SECTION

WAC 388-551-2130 Home health services—Noncovered. (1) MAA does not cover the following **home health services and expenses**:

- (a) Medical social work services;
- (b) Psychiatric skilled nursing services;
- (c) Pre- and postnatal skilled nursing services;
- (d) Additional administrative costs billed above the visit rate (these costs are included in the visit rate and may not be billed separately);
- (e) Well baby follow-up care;
- (f) Services performed in hospitals, correctional facilities, skilled nursing facilities or a residential facility with skilled nursing services available;
- (g) Home health aide services that are not provided in conjunction with skilled nursing or **specialized therapy** services;
- (h) Health care for a medically stable client (e.g., one who does not have an acute episode, a disease exacerbation, or treatment change);
- (i) Home health **specialized therapies** and home health aide visits for clients in the following programs:
 - (i) CNP - emergency medical only; and
 - (ii) LCP-MNP - emergency medical only;
- (j) Skilled nursing visits for a client when a **home health agency** cannot safely meet the medical needs of that client within **home health services** program limitations (e.g., for a client to receive infusion therapy services, the caregiver must be willing and capable of managing the client's care);
- (k) More than one of the same type of specialized therapy and/or home health aide visit per day;
- (l) Home health visits made without a written physician order unless the verbal order is:
 - (i) Written prior to or on the date of the visit; and
 - (ii) Signed by the physician within forty-five days.

NEW SECTION

WAC 388-551-2200 Home health services—Eligible providers. A home health provider may contract with MAA to be a Medicaid provider if the provider is Title XVIII (Medicare) certified and licensed by the state as a **home health agency**. Providers must have an active Medicaid provider number to bill MAA.

NEW SECTION

WAC 388-551-2210 Home health providers—Requirements. For any delivered **home health service** to be payable, MAA requires home health providers to develop and implement an individualized **plan of treatment (POT)** for the client.

- (1) The **POT** must:
 - (a) Be documented in writing and be located in the client's home health medical record;
 - (b) Be developed and supervised by a licensed registered nurse or licensed therapist;
 - (c) Reflect the physician's orders and client's current health status;

- (d) Be reviewed, revised, and signed by a physician at least every sixty-two calendar days;
- (e) Contain specific goals and treatment plans; and
- (f) Be available to department staff or its designated contractor(s) on request.
- (2) The provider must include in the **POT** all of the following:
 - (a) The primary diagnosis (the diagnosis that is most related to the reason the client qualifies for **home health services**);
 - (b) The medical diagnoses and prognosis, including date(s) of onset or exacerbation;
 - (c) A discharge plan;
 - (d) The type(s) of equipment required;
 - (e) A description of each planned service and goals related to the services provided;
 - (f) Specific procedures and modalities;
 - (g) A description of the client's mental status;
 - (h) Rehabilitation potential;
 - (i) A list of permitted activities;
 - (j) A list of safety measures taken on behalf of the client;
- and
- (k) A list of medications which indicates:
 - (i) The date any new prescription is prescribed; and
 - (ii) Which medications are changed for dosage or route of administration.
- (3) The provider must include in or attach to the **POT**:
 - (a) A description of the client's functional limits and the effects;
 - (b) Significant clinical findings;
 - (c) Dates of recent hospitalization; and
 - (d) If the client is not **homebound**, a description of why **home health services** are necessary. The description must include:
 - (i) A written statement noting coordination with, or referral to, the client's department of social and health services-assigned case manager; or
 - (ii) An assessment of the client and the client's access to community resources, including attempts to use appropriate alternatives to meet the client's home health needs.
 - (4) The individual client medical record must comply with community standards of practice, and must include documentation of:
 - (a) Supervisory visits for home health aide services per WAC 388-551-2120(3);
 - (b) All medications administered and treatments provided;
 - (c) All physician orders and change orders, with notation that the order was received prior to treatment;
 - (d) Signed physician new orders and change orders;
 - (e) Home health aide services as indicated by a registered nurse or licensed therapist in a home health aide care plan;
 - (f) Interdisciplinary team communications;
 - (g) Inter-agency and intra-agency referrals;
 - (h) Medical tests and results; and
 - (i) Pertinent medical history.
 - (5) The provider must document at least the following in the client's visit notes:

- (a) Skilled interventions per the POT;
- (b) Any clinical change in client status;
- (c) Follow-up interventions specific to a change in status with significant clinical findings; and
- (d) Any communications with the attending physician.

(6) The provider must include the following documentation in the client's visit notes when appropriate:

- (a) Any teaching, assessment, management, evaluation, patient compliance, and client response;
- (b) Weekly documentation of wound care, size, drainage, color, odor, and identification of potential complications and interventions provided; and
- (c) The client's physical system assessment as identified in the POT.

NEW SECTION

WAC 388-551-2220 Home health providers—Payments. (1) Payment to home health providers is:

- (a) A set visit rate for each discipline provided to a client;
- (b) Based on the county location of the providing **home health agency**; and
- (c) Updated by general vendor rate changes.

(2) For clients eligible for Medicaid and Medicare, MAA may pay for services described in this chapter only when Medicare does not cover those services. The maximum payment for each service is Medicaid's maximum payment.

(3) Providers must submit documentation to the department during any MAA focused program review period. Documentation includes, but is not limited to, the requirements listed in WAC 388-551-2210.

(4) After MAA receives the documentation, MAA's medical director or designee reviews the client's medical records for program compliance and quality of care.

(5) MAA may take back payment for any insufficiently documented home health care service when the MAA medical director or designee determines that:

- (a) The service was not medically necessary (defined in WAC 388-500-0005) or reasonable;
- (b) Clients were able to receive care outside of the home (see definition of **homebound** in this chapter and WAC 388-551-2100(3)); or
- (c) The service was not in compliance with program policy.

(6) Covered **home health services** for clients enrolled in a Healthy Options managed care plan are paid for by that plan.

REPEALER

The following section of the Washington Administrative Code is repealed:

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-87-065

Payment—Home health agency.

WSR 99-11-060 WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(By the Code Reviser's Office)

[Filed May 18, 1999, 10:45 a.m.]

WAC 388-87-110, proposed by the Department of Social and Health Services in WSR 98-22-099 appearing in issue 98-22 of the State Register, which was distributed on November 18, 1998, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 99-11-071 PROPOSED RULES DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Medical Assistance Administration)

[Filed May 18, 1999, 2:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 99-03-075.

Title of Rule: Repealing WAC 388-86-073 Occupational therapy and new WAC 388-545-300 Occupational therapy.

Purpose: The department is establishing new chapter 388-545 WAC to combine all medical therapy rules. Therefore, WAC 388-86-073 Occupational therapy is being repealed and WAC 388-545-300 Occupational therapy is being established. The new chapter reorganizes rule sections and updates the language to comply with the Governor's Executive Order 97-02.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.520.

Summary: The department is establishing new chapter 388-545 WAC to combine all medical therapy rules. Therefore, WAC 388-86-073 Occupational therapy is being repealed and WAC 388-545-300 Occupational therapy is being established. The new chapter reorganizes rule sections and updates the language to comply with the Governor's Executive Order 97-02.

Reasons Supporting Proposal: To comply with the Governor's Executive Order 97-02. To combine all medical therapies into one chapter.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Patty Balestra, DOSS, 623 8th Avenue S.E., Olympia, WA 98501, (360) 586-3745.

Name of Proponent: Department of Social and Health Services, Medical Assistance Administration, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: The new chapter 388-545 WAC is being established to combine all medical therapies into one chapter, necessitating the repeal of the existing chapter (WAC 388-86-073). The new rule reorganizes sections and uses clear writing standards to clarify program requirements.

Proposal Changes the Following Existing Rules: The proposed rule repeals the existing chapter and combines it with other rules (speech/audiology services and occupational therapy services) into one new chapter.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rule amendments and concludes that no new costs will be imposed on the small businesses that are affected by them.

RCW 34.05.328 does not apply to this rule adoption. The rule does not fit the definition of a significant legislative rule.

Hearing Location: Lacey Government Center (behind Tokyo Bento Restaurant), 1009 College Street S.E., Room 104-B, Lacey, WA 98503, on June 22, 1999, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Paige Wall by June 11, 1999, phone (360) 902-7540, TTY (360) 902-8324, e-mail pwall@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, Paige Wall, Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 902-8292, by June 22, 1999.

Date of Intended Adoption: August 1, 1999.

May 13, 1999

Marie Myerchin-Redifer, Manager
Rules and Policies Assistance Unit

NEW SECTION

WAC 388-545-300 Occupational therapy. (1) The following providers are eligible to enroll with medical assistance administration (MAA) to provide occupational therapy services:

(a) A licensed occupational therapist;

(b) A licensed occupational therapy assistant supervised by a licensed occupational therapist; and

(c) An occupational therapy aide, in schools, trained and supervised by a licensed occupational therapist.

(2) Clients in the following MAA programs are eligible to receive occupational therapy services described in this chapter:

(a) Categorically needy;

(b) Children's health;

(c) General assistance unemployable (within Washington state or border areas only);

(d) Alcoholism and drug addiction treatment and support act (ADATSA) (within Washington state or border areas only);

(e) Medically indigent program for emergency hospital-based services only; or

(f) Medically needy program only when the client is either:

(i) Twenty years of age or younger and referred by a screening provider under the early and periodic screening, diagnosis and treatment program (healthy kids program) as described in WAC 388-86-027; or

(ii) Receiving home health care services as described in WAC 388-86-045.

(3) Occupational therapy services received by MAA eligible clients must be provided:

(a) As part of an outpatient treatment program for adults and children;

(b) By a home health agency as described under WAC 388-86-045;

(c) As part of the physical medicine and rehabilitation (PM&R) program as described in WAC 388-86-112;

(d) By a neurodevelopmental center;

(e) By a school district or educational service district as part of an individual education program or individualized family service plan as described in WAC 388-86-022; or

(f) When prescribed by a provider for clients age twenty-one or older. The therapy must:

(i) Prevent the need for hospitalization or nursing home care;

(ii) Assist a client in becoming employable;

(iii) Assist a client who suffers from severe motor disabilities to obtain a greater degree of self-care or independence; or

(iv) Be a part of a treatment program intended to restore normal function of a body part following injury, surgery, or prolonged immobilization.

(4) MAA pays only for covered occupational therapy services listed in this section when they are:

(a) Within the scope of an eligible client's medical care program;

(b) Medically necessary, when prescribed by a provider; and

(c) Begun within thirty days of the date prescribed.

(5) MAA covers the following occupational therapy services per client, per calendar year:

(a) Unlimited occupational therapy program visits for clients twenty years of age or younger;

(b) One occupational therapy evaluation. The evaluation is in addition to the twelve program visits allowed per year;

(c) Two durable medical equipment needs assessments. The assessments are in addition to the twelve program visits allowed per year;

(d) Twelve occupational therapy program visits;

(e) Twenty-four additional outpatient occupational therapy program visits when the diagnosis is any of the following:

(i) A medically necessary condition for developmentally delayed clients;

(ii) Surgeries involving extremities, including:
 (A) Fractures; or
 (B) Open wounds with tendon involvement;
 (iii) Intracranial injuries;
 (iv) Burns;
 (v) Traumatic injuries;
 (f) Twenty-four additional occupational therapy program visits following a completed and approved inpatient PM&R program. In this case, the client no longer needs nursing services but continues to require specialized outpatient therapy for any of the following:
 (i) Traumatic brain injury (TBI);
 (ii) Spinal cord injury (paraplegia and quadriplegia);
 (iii) Recent or recurrent stroke;
 (iv) Restoration of the levels of function due to secondary illness or loss from multiple sclerosis (MS);
 (v) Amyotrophic lateral sclerosis (ALS);
 (vi) Cerebral palsy (CP);
 (vii) Extensive severe burns;
 (viii) Skin flaps for sacral decubitus for quads only;
 (ix) Bilateral limb loss; or
 (x) Acute, infective polyneuritis (Guillain-Barre' syndrome).

(g) Additional medically necessary occupational therapy services, regardless of the diagnosis, must be approved by MAA.

(6) MAA will pay for one application of transcutaneous neurostimulator (TENS), per client, per lifetime.

(7) MAA does not cover occupational therapy services that are included as part of the reimbursement for other treatment programs. This includes, but is not limited to, hospital inpatient and nursing facility services.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-86-073

Occupational therapy.

WSR 99-11-072
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Economic Services Administration)
 (WorkFirst Division)
 [Filed May 18, 1999, 2:26 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 98-19-124 on September 23, 1998.

Title of Rule: Adds new section on the reemploy Washington workers program, WAC 388-310-1850.

Purpose: The idea for the reemploy Washington workers (RWW) program came from the governor's office. The program will be part of WorkFirst and be administered by Employment Security Department (ESD) in the field. RWW provides rapid reemployment services to low-wage unem-

ployment insurance claimants. This rule was cowritten by DSHS and ESD to comply with Governor Locke's Executive Order 97-02.

Statutory Authority for Adoption: RCW 74.08.090 and 74.04.050.

Statute Being Implemented: RCW 74.08.090 and 74.04.050.

Summary: Adds new section on the reemploy Washington workers program, written to comply with Governor Locke's Executive Order 97-02.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Sandy James, WorkFirst Division, P.O. Box 45480, Olympia, WA 98504-5480, (360) 413-3239, e-mail jsamessm@dshs.wa.gov, fax (360) 413-3482.

Name of Proponent: Department of Social and Health Services, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: Revises chapter and adds new section to bring chapter 388-310 WAC into compliance with Governor Locke's Executive Order 97-02.

Proposal does not change existing rules.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Changes do not affect small businesses.

RCW 34.05.328 applies to this rule adoption. Although this rule meets the definition of a significant legislative rule, RCW 34.05.328 (5)(b)(vii) exempts DSHS rules that only apply to client medical or financial eligibility.

Hearing Location: Lacey Government Center (behind Tokyo Bento Restaurant), 1009 College Street S.E., Room 104-B, Lacey, WA 98503, on June 22, 1999, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Paige Wall by June 11, 1999, phone (360) 902-7540, TTY (360) 902-8324, e-mail pwall@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, Paige Wall, Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 902-8292, by June 22, 1999.

Date of Intended Adoption: No sooner than June 23, 1999.

May 14, 1999

Marie Myerchin-Redifer, Manager
 Rules and Policies Assistance Unit

NEW SECTION

WAC 388-310-1850 Re-employ Washington workers (RWW). (1) What is the re-employ Washington workers (RWW) program?

Re-employ Washington workers (RWW) is an eight-week job search program administered by the employment security department to help low-income parents connect with jobs as rapidly as possible. RWW participation satisfies unemployment insurance work search requirements while providing additional services and activities.

(2) Who can participate in RWW?

PROPOSED

You can participate in RWW if you:

- (a) Worked and earned enough to establish an unemployment insurance benefit claim (see RCW 50.04.030), regardless of why your job ended; and
- (b) Did not earn more than one hundred seventy-five percent of the federal poverty level during the time period on which your unemployment insurance claim is based; and
- (c) Do not currently receive TANF or SFA cash assistance; and
- (d) Have a dependent child under eighteen years of age living in your household.

(3) How do I get into RWW?

To get into RWW, you must apply for unemployment insurance and establish an unemployment insurance benefit claim. A job service specialist who has been trained to do the RWW program will screen your claim and contact you if it appears that you qualify. The RWW job service specialist will then determine your eligibility based on additional income and family information you provide.

(4) What happens when I participate in RWW?

(a) In addition to any unemployment insurance benefits you receive, you also get:

- (i) Intensive job referral services (including a thirty-hour, job search workshop within the first four weeks of participation, and access to the resource room);
- (ii) Help with paying your child care costs under the working connections child care program (see chapter 388-290 WAC for program rules);
- (iii) Support services to help you participate in work and RWW activities, following the guidelines in WAC 388-310-0800.

(b) You may also qualify for cash incentives if you meet the following requirements:

(i) You participate in the RWW program; and

(ii) Go to work within six weeks; and

(iii) Are still working twelve weeks later in a job that takes you off unemployment insurance.

(5) How much of a cash incentive can I receive?

If you return to work with earnings high enough to make you ineligible for unemployment insurance benefits, you can receive an RWW cash incentive once during the time period your unemployment insurance claim is based on. Earnings are calculated in accordance with the unemployment insurance laws in RCW 50.04.320. The cash incentives are as follows:

CASH INCENTIVES			
Average gross weekly earnings	Employed within four weeks	Employed in week five or six	Employed in week seven or eight
At or above earnings from your last job*	\$300	\$100	N/A**
Below the earnings from your last job*	\$200	\$100	N/A**

*"Last job" means your most recent job that meets the definition of work in WAC 388-310-0400(2)(a).

**Although you do not qualify for a cash incentive, you would continue to receive support services and child care assistance provided you continue to participate.

(6) What are the requirements to participate in RWW?

To be eligible for RWW program benefits, you must participate in RWW program activities, including:

- (a) Attend a thirty-hour job search workshop as soon as possible (during your first four weeks in the program);
- (b) Report to the RWW program site daily during the first four weeks and sign-in to get job leads;
- (c) Meet with fellow job seekers to support and encourage each members' job search efforts (sometimes called the RWW job club);
- (d) Report to the RWW program site at least twice a week during weeks five to eight and sign-in to receive job leads.

(7) Can I continue to participate in RWW if I don't find a job in eight weeks?

Your participation in RWW may be extended for an additional eight weeks if:

- (a) You meet the participation requirements and
- (b) RWW staff determine that an additional eight weeks of participation is likely to help you find a job.

(8) Can my RWW services be stopped once I enter the program?

If you do not follow RWW program requirements, RWW services will be stopped.

(9) What can I do if I disagree with a decision about my services or benefits?

If you disagree with the decision about your RWW services or benefits:

(a) Ask an RWW job service specialist to take a statement from you explaining the reason you disagree.

(b) To determine if the decision was correct, the employment security department local job service center management will review your statement.

(c) If you disagree with the local management decision, you may request a final review by the employment security department regional office.

(10) Can I go back into the RWW program if there were interruptions in my participation?

RWW job search is designed to last for eight consecutive weeks. If you stopped participating but you are now able and willing to participate, you may complete the balance of your eight-week job search activities and receive the related RWW services and benefits.

WSR 99-11-073
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Economic Services Administration)
 [Filed May 18, 1999, 2:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 99-01-113.

Title of Rule: New WAC 388-436-0002 DSHS provides a cash benefit called additional requirements for additional needs (AREN) to help families pay for short term expenses caused by an emergency; and repeals WAC 388-436-0001 Additional requirement for emergent needs (AREN) and 388-436-0005 AREN good cause.

Purpose: Repeals WAC 388-436-0001 and 388-436-0005. Adopts new section to modify emergency assistance rules to allow payments to secure housing for homeless families and remove technical requirements that prevented some families from receiving emergency assistance. Additional changes are proposed to increase the amount of emergency assistance that may be provided.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.08.090.

Summary: Formal written eviction notices will no longer be required. Families without permanent housing will qualify for emergency assistance without needing to provide a formal written eviction notice. The existing rule limits the emergency assistance benefit based on household size. The new rules removes the payment limit based on household size. The benefit amount will be established based on the cost of the emergent need, regardless of household size.

Reasons Supporting Proposal: Homelessness is a barrier to employment and other self-supporting activity. Current payment limitations are insufficient to alleviate many critical need situations.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Michael Thomas, Program Manager, Lacey Government Center, 1009 College Street S.E., Lacey, WA 98503, (360) 413-3240, fax (360) 413-3482.

Name of Proponent: Department of Social and Health Services, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: Emergency assistance is provided to meet certain emergent needs for housing, clothing, food, and other necessities required to assure the health and safety of families with children. The changes proposed to the current rules will allow more families to qualify for emergency assistance benefits and will allow payments to be higher than allowed under the current limitations.

Removing several technical requirements will make it easier for families to qualify for emergency assistance benefits.

Proposal Changes the Following Existing Rules: This proposal repeals WAC 388-436-0001 and 388-436-0005 and adds new section.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Small businesses are not affected by this rule filing.

RCW 34.05.328 applies to this rule adoption. These rules do meet the definition of significant legislative rule but DSHS is exempt from preparing a cost benefit analysis under RCW 34.05.328 (5)(b)(vii).

Hearing Location: Lacey Government Center (behind Tokyo Bento Restaurant), 1009 College Street S.E., Room 104-B, Lacey, WA 98503, on June 22, 1999, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Paige Wall by June 11, 1999, phone (360) 902-7540, TTY (360) 902-8324, e-mail pwall@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, Paige Wall, Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 902-8292, by June 22, 1999.

Date of Intended Adoption: July 1, 1999.

May 17, 1999

Marie Myerchin-Redifer, Manager
Rules and Policies Assistance Unit

NEW SECTION

WAC 388-436-0002 DSHS provides a cash benefit called additional requirements for emergent needs (AREN) to help families pay for short-term expenses caused by an emergency. (1) Who can receive additional requirements for emergent needs (AREN) benefits?

A family may request AREN benefits if they have applied for or already get cash assistance from the temporary assistance for needy families (TANF), state family assistance (SFA) or refugee cash assistance (RCA) program. The family must meet the eligibility conditions for TANF, SFA or RCA to receive AREN benefits.

(2) Will AREN change the amount of our assistance?

When the department approves AREN benefits, the amount used to figure how much assistance the family can receive is increased for one month. This is called an 'increased payment standard.' The department uses the increased standard to:

(a) Determine initial eligibility and calculate the payment amount for families who are new applicants; or

(b) Calculate the monthly payment amount for families already receiving assistance.

(3) What kinds of things are considered AREN emergencies?

(a) The family experienced a disaster such as a theft, house fire, flood, severe weather, accident or medical emergency.

(b) The family has extra short-term expenses caused by homelessness, domestic violence, or situations that jeopardize the family's health and safety.

(c) The family's funds were used to pay for necessary expenses such as:

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- (i) Basic health and safety needs for shelter, food and clothing;
- (ii) Medical care;
- (iii) Dental care need to obtain employment or because of pain;
- (iv) Emergency child care;
- (v) Other reasonable and necessary expenses.

(d) The family's cash grant has been reduced or terminated in anticipation of income that will not be available to pay for the need when the payment is due.

(4) Do I need to provide proof that I have an emergency?

Families must show proof that there is a good reason they do not have sufficient funds to meet their short-term need. The proof must show:

- (a) Why funds are insufficient to pay for the need; and
- (b) The amount of money necessary to meet the need; and
- (c) How the family will pay for the need in the future; and
- (d) The expense is for a need listed in subsection (5) of this rule.

(5) What kind of expenses does the AREN benefit cover?

The department may approve AREN benefits to pay for the following kinds of expenses:

(a) Rent, security deposits, mortgage payments, taxes or fees:

(i) To prevent an eviction or foreclosure from causing the loss of housing that the family will be able to afford in the future.

(ii) To obtain housing subsidies or permanent housing the family will be able to afford in the future when:

(A) Eviction or foreclosure is not preventable.

(B) The family has no housing or has only temporary housing.

(C) The current housing puts the family's health or safety in danger due to a condition the property owner is unable or unwilling to fix.

(D) Moving is necessary to escape a domestic violence situation.

(b) Repairs, deposits, fees and services to assure the household has electricity, water, sewer or fuel for heating and cooking.

(c) Bedding, clothing, cooking utensils, and personal hygiene items when the family has lost these items due to a disaster, domestic violence, or homelessness.

(d) Food when the family has no other way to get food.

(e) Other goods and services necessary to protect the health and safety of the family.

(6) Are there any limits on the amount of AREN benefits I can get?

(a) When AREN benefits are approved, the department pays the least amount necessary to get the family through the emergency. Funds from other sources affect the amount of AREN the department pays. A representative from the department will work with your family to figure out the amount.

(b) There is no limit on how frequently a family may request or receive AREN benefits. The department makes the eligibility decision based on whether or not there is a reasonable cause for the emergent need and the lack of funds available to the family.

(7) How does the department pay the AREN benefit?

(a) The department pays the approved AREN benefit as part of the family's TANF, SFA or RCA cash grant using the income rules found in chapter 388-450 WAC.

(b) When possible, the department pays AREN benefits directly to a third party under the provisions in WAC 388-460-0001.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-436-0001

Additional requirement for emergent needs (AREN).

WAC 388-436-0005

AREN good cause.

WSR 99-11-074

PROPOSED RULES

**DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

(Medical Assistance Administration)

[Filed May 18, 1999, 2:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 98-23-091.

Title of Rule: Repealing WAC 388-86-098 Speech therapy services and new 388-545-700 Speech/audiology services.

Purpose: The department is establishing new chapter 388-545 WAC to combine all medical therapy rules. Therefore, WAC 388-86-098 is being repealed and WAC 388-545-700 is being established. The new chapter clarifies program requirements to comply with the Governor's Executive Order 97-02, adds criteria for speech/audiology services, and combines speech therapy with audiology services in one place.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.520.

Summary: The department is establishing new chapter 388-545 WAC to combine all medical therapy rules. Therefore, WAC 388-86-098 Speech therapy services, is being repealed and WAC 388-545-700 is being established. The new chapter adds the following criteria: Adds a second diagnosis for when a second evaluation is allowed. It also combines speech therapy and audiology services into one WAC. Rewritten sections clarify program requirements to comply with the Governor's Executive Order 97-02, which mandates that all rules be reviewed for clarity, necessity, fairness, etc.

Reasons Supporting Proposal: To comply with the Governor's Executive Order 97-02. To combine all medical therapy rules in one chapter to promote ease of use.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Patty Balestra, DOSS, 623 8th Avenue S.E., Olympia, WA 98501, (360) 586-3745.

Name of Proponent: Department of Social and Health Services, Medical Assistance Administration, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: New chapter 388-545 WAC is being established to combine all medical therapies into one chapter, necessitating the repeal of the existing chapter. The new rule reorganizes sections and uses clear writing standards to clarify program requirements. The new rule adds coverage for a diagnosis in those circumstances when a second evaluation is allowed. The new rule combines the requirements for speech therapy services and audiology services into one chapter.

The purpose of the new rule is to make it easier for readers to understand the department's policy and to be able to find all available information in one place.

The anticipated effect of the clarification and consolidation is to make the rule easier to understand and to find.

Proposal Changes the Following Existing Rules: The proposal repeals the existing rule and combines it with other rules (speech/audiology services and occupational therapy services) into one new chapter.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rule amendments and concludes that no new costs will be imposed on the small businesses that are affected by them.

RCW 34.05.328 does not apply to this rule adoption. The rule does not fit the definition of a significant legislative rule.

Hearing Location: Lacey Government Center (behind Tokyo Bento Restaurant), 1009 College Street S.E., Room 104-B, Lacey, WA 98503, on June 22, 1999, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Paige Wall by June 11, 1999, phone (360) 902-7540, TTY (360) 902-8324, e-mail pwall@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, Paige Wall, Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 902-8292, by June 22, 1999.

Date of Intended Adoption: August 1, 1999.

May 13, 1999

Marie Myerchin-Redifer, Manager
Rules and Policies Assistance Unit

NEW SECTION

WAC 388-545-700 Speech/audiology services. (1)

The following providers are eligible to enroll with medical assistance administration (MAA) to provide, and be reimbursed for, speech/audiology services:

(a) A speech-language pathologist who has been granted a certificate of clinical competence by the American Speech, Hearing and Language Association;

(b) A speech-language pathologist who has completed the equivalent educational and work experience necessary for such a certificate;

(c) An audiologist who is appropriately licensed or registered to perform audiology services within their state of residence; and

(d) School districts or educational service districts. Services must be noted in the client's individual educational program or individualized family service plan as described under WAC 388-86-022.

(2) Clients in the following MAA programs are eligible to receive speech/audiology services described in this chapter:

(a) Categorically needy, children's health, general assistance unemployable, and alcoholism and drug addiction treatment and support act (ADATSA) programs within Washington state or border areas only; or

(b) Medically needy program only when the client is either:

(i) Twenty years of age or under; or

(ii) Receiving home health care services as described under WAC 388-86-045;

(c) Medically indigent program only for emergency hospital-based services.

(3) MAA pays only for covered speech/audiology services listed in this section when they are:

(a) Within the scope of an eligible client's medical care program;

(b) For conditions which are the result of medically recognized diseases and defects; and

(c) Medically necessary, as determined by a health professional.

(4) The following speech/audiology services are covered per client, per calendar year, per provider:

(a) Unlimited speech/audiology program visits for clients twenty years of age and younger;

(b) One medical diagnostic evaluation. The medical diagnostic evaluation is in addition to the twelve program visits allowed per year;

(c) One second medical diagnostic evaluation at the time of discharge for any of the following:

(i) Anoxic brain damage;

(ii) Acute, ill-defined, cerebrovascular disease;

(iii) Subarachnoid, subdural, and extradural hemorrhage following injury; or

(iv) Intracranial injury of other and unspecified nature;

(d) Twelve speech/audiology program visits for clients twenty-one years of age and older;

(e) Twenty-four additional speech/audiology visits if the speech/audiology service is for any of the following:

(i) Medically necessary conditions for developmentally delayed clients;

(ii) Neurofibromatosis;

(iii) Severe oral or motor dyspraxia;

(iv) Amyotrophic lateral sclerosis (ALS);

(v) Multiple sclerosis;

(vi) Cerebral palsy;

(vii) Quadriplegia;

(viii) Acute, infective polyneuritis (Guillain-Barre' syndrome);

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(ix) Acute, but ill-defined, cerebrovascular disease;

(x) Meningomyelocele;

(xi) Cleft palate and cleft lip;

(xii) Down's syndrome;

(xiii) Lack of coordination;

(xiv) Severe aphasia;

(xv) Severe dysphagia;

(xvi) Fracture of the:

(A) Vault or base of the skull;

(B) Multiple fracture involving skull or face with other bones;

(C) Cervical column;

(D) Larynx and trachea; or

(E) Other and unqualified skull fractures;

(xvii) Head injuries as follows:

(A) Cerebral laceration and contusion;

(B) Subarachnoid, subdural, and extradural hemorrhage following injury;

(C) Other and unspecified intracranial hemorrhage following injury;

(D) Injury to blood vessels of the head and neck; or

(E) Intracranial injury of other second unspecified nature;

(xviii) Burns of:

(A) The face, head, and neck, when severe;

(B) Multiple, specified sites; or

(C) Internal organs;

(xix) Cervical spinal cord injury without evidence of spinal bone injury; or

(xx) Other speech disturbances (e.g., severe dysarthria).

(f) Additional medically necessary speech/audiology program visits beyond the initial twelve visits and additional twenty-four visits if approved by MAA.

(5) MAA limits:

(a) Caloric vestibular testing to four units for each ear, and

(b) Sinusoidal vertical axis rotational testing to three units for each direction.

Summary:

New WAC number replaces	Repealed WAC No.	Summary
388-01-010 What are the purposes of this chapter?	388-320-010	Describes the purposes of the chapter.
388-01-020 How is DSHS organized?	388-320-030	Describes the organization of DSHS.
388-01-030 What department records are considered public?		Describes what DSHS records are considered "public."
388-01-040 What public records are available for release?	388-320-100, 388-320-220	Describes what DSHS records are available for release.
388-01-050 Who should be contacted to request a public record?	388-320-110, 388-320-115, 388-320-130	Describes who to contact to request a public record.
388-01-060 How can an individual request a public record?	388-320-130	Explains how an individual can request a public record.
388-01-070 When can a public record be examined?	388-320-130	States the hours when a public record can be examined.

(6) MAA does not cover speech/audiology services that are included as part of the reimbursement for other treatment programs. This includes, but is not limited to, hospital inpatient and nursing facility services.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-86-098 Speech therapy services.

WSR 99-11-085

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Management Services Administration)

[Filed May 19, 1999, 9:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 99-07-104.

Title of Rule: Repeal chapter 388-320 WAC, Public records disclosure and replace with chapter 388-01 WAC, DSHS organization/disclosure of public records. See Summary below.

Purpose: Repeals old chapter 388-320 WAC, Public records disclosure—Administrative procedures and replaces it with new chapter 388-01 WAC, DSHS organization/disclosure of public records. Chapter 388-01 WAC is written in clear rule writing style to comply with the criteria in the Governor's Executive Order 97-02. These rules clearly explain how individuals or organizations request public records from DSHS, and how DSHS responds to public record requests.

Statutory Authority for Adoption: RCW 42.17.250 and 34.05.220.

Statute Being Implemented: RCW 42.17.250 and 34.05.220.

New WAC number replaces	Repealed WAC No.	Summary
388-01-080 Does DSHS charge for examining or copying public records?	388-320-140	Explains the fees DSHS charges for copies of public records.
388-01-090 When and how must DSHS respond to a public record request?	388-320-100, 388-320-205	Describes what DSHS must do to respond to a public record request.
388-01-100 What if DSHS fails to respond to a public record request within five business days?	388-320-100	Explains what happens if DSHS fails to timely respond to a public record request. A petition for review will not be reviewed by the "public records officer" instead it will be reviewed by the denying public disclosure coordinator or "a director approved designee."
388-01-110 When might DSHS need to extend the time to respond to a public record request?	388-320-100	Explains the circumstances when DSHS may need more time to respond to a public record request.
388-01-120 What if an individual thinks DSHS is unreasonably delaying the release of a public record?	388-320-100	Explains an individual's options if they feel DSHS is unreasonably delaying the release of a public record.
388-01-130 What if the public record that is requested contains exempt information?	388-320-133, 388-320-205, 388-320-225	Explains what DSHS does if a public record that is requested contains exempt information.
388-01-140 What are an individual's options if DSHS denies a public record request?	388-320-210	Explains an individual's options if DSHS denies a public record. A petition for review will not be reviewed by the "public records officer" instead it will be reviewed by the denying public disclosure coordinator or "a director approved designee."
388-01-150 If a public record contains person information that identifies an individual or organization, other than the subject of the record, is that individual or organization notified?	This section replaces DSHS Administrative Policy 6.14	Puts into rule that DSHS may notify an individual or organization if a requested public record contains personal information about them.
388-01-160 Can an individual's representative request their public record?	388-320-160	Reflects that a signed written release is needed for an individual's representative to receive that individual's public records. Reference to "legislators" being able to receive information without written release has been deleted.
388-01-170 Is DSHS required to create public records for requesters?		New rule explains that DSHS is only required to provide access to existing public record in its possession at the time of the request.
388-01-180 Can DSHS release public records to its offices and to outside agencies?	388-320-235, 388-320-240	Explains how and when DSHS can release public records to its offices and to outside agencies.
388-01-190 Who should be contacted to review an administrative or policy statement index, or to get a copy of the index?	388-320-450	Explains who should be contacted to review or get a copy of an administrative or policy statement index.
388-01-210 How can and [an] individual get an index of DSHS significant decisions?	388-320-460	Explains how someone can get an index of DSHS significant decisions.
388-01-220 How are petitions for declaratory orders filed?	388-320-375	This re-numbers and clarifies information on how someone can file a petition for declaratory order.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Edith Rice, Office of Legal Affairs, P.O. Box 45823, Olympia, WA 98504-5823, (360) 664-6051.

Name of Proponent: Department of Social and Health Services, governmental.

Rule is not necessitated by federal law, federal or state court decision.

PROPOSED

Explanation of Rule, its Purpose, and Anticipated Effects: Chapter 388-01 WAC is written in clear rule writing style to comply with the criteria in the Governor's Executive Order 97-02. These rules clearly explain how individuals or organizations request public records from DSHS, and how DSHS responds to public record requests. DSHS anticipates that greater understanding of the public disclosure process will help the public and DSHS staff in requests and responses to public record requests.

Proposal Changes the Following Existing Rules: Repeal existing chapter 388-320 WAC, Public records disclosure—Administrative procedures and replace with new chapter 388-01 WAC, DSHS organization/disclosure of public records.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rules and concludes that no businesses are affected by these rules.

RCW 34.05.328 does not apply to this rule adoption. These rules do not meet the definition of a significant legislative rule.

Hearing Location: Lacey Government Center (behind Tokyo Bento Restaurant), 1009 College Street S.E., Room 104-B, Lacey, WA 98503, on June 22, 1999, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Paige Wall by June 11, 1999, phone (360) 902-7540, TTY (360) 902-8324, e-mail wallpg@dshs.wa.gov.

Submit Written Comments to: Identify WAC Numbers, Paige Wall, Rules Coordinator, Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, fax (360) 902-8292, by June 22, 1999.

Date of Intended Adoption: July 1, 1999.

May 18, 1999

Marie Myerchin-Redifer, Manager
Rules and Policies Assistance Unit

Chapter 388-01 WAC

DSHS ORGANIZATION/DISCLOSURE OF PUBLIC RECORDS

NEW SECTION

WAC 388-01-010 What are the purposes of this chapter? The purposes of this chapter are to:

- (1) Describe the organization of the department of social and health services (DSHS);
- (2) Ensure that DSHS complies with laws governing the disclosure (release) of public records; and
- (3) Explain how an individual or organization can obtain public records.

DSHS ORGANIZATION

NEW SECTION

WAC 388-01-020 How is DSHS organized? (1) DSHS was created to unite related statewide social and health service programs within a single agency. DSHS programs are designed to protect the general public, as well as persons who are unable to fully care for themselves or meet their basic

needs. It is organized into seven administrations plus the secretary's and deputy secretary's offices:

- (a) Aging and adult services,
- (b) Children's services,
- (c) Economic services,
- (d) Health and rehabilitative services,
- (e) Juvenile rehabilitation,
- (f) Management services, and
- (g) Medical assistance.

(2) To request an organizational chart, contact: DSHS, Office of the Secretary, P.O. Box 45010, Olympia, WA 98504-5010, or telephone number (360) 902-7800.

(3) DSHS has offices in the community to serve clients. Local DSHS offices go by various names such as community services office (CSO), regional offices, home and community services (HCS), division of child support (DCS), children's services, division of developmental disabilities (DDD) field service offices, and facilities.

DISCLOSURE OF PUBLIC RECORDS

NEW SECTION

WAC 388-01-030 What department records are considered public? DSHS prepares and keeps public records that relate to the programs. Different types of public records include: Documents, audio or video recordings, pictures, electronic disks, and magnetic tapes.

NEW SECTION

WAC 388-01-040 What public records are available for release? (1) Public records kept by DSHS are available for release unless the law specifically excludes (or exempts) them.

(2) For a list of public records that are excluded from public disclosure by law, see RCW 42.17.310 and other disclosure laws specific to DSHS programs.

NEW SECTION

WAC 388-01-050 Who should be contacted to request a public record? An individual should contact the public disclosure coordinators at DSHS offices to request a record. Public disclosure coordinators are located at local community service offices (CSO), regional offices, home and community services (HCS), division of child support (DCS), children's services, DDD field services offices, DSHS facilities, and within each DSHS administration.

NEW SECTION

WAC 388-01-060 How can an individual request a public record? (1) An individual can request a public record orally or in writing. DSHS encourages that all public record requests be in writing on a "request for disclosure of DSHS records" form, DSHS 17-041(X). Individuals may request this form from DSHS, Forms and Records Management Services, P.O. Box 45805, Olympia, WA 98504-5805, (360)

664-6120, or e-mail at DSHSFormsRecordsMgmt@dshs.wa.gov.

(2) If the form is not used, the written public record request should include the following information:

(a) The requester's name, organization, mailing address, telephone number, fax number, and e-mail address;

(b) The date of the request;

(c) A detailed description of the public record being requested;

(d) The DSHS office location at which the requester would like to examine the public record at, or if copies of the records should be mailed; and

(e) The signature of the requester.

(3) Individuals can fill out record requests at a DSHS office, or send it by regular mail, electronic mail, or fax to the public disclosure coordinator at the appropriate DSHS office.

(4) DSHS may ask an individual requesting a public record for personal identification.

NEW SECTION

WAC 388-01-070 When can a public record be examined? Individuals can examine public records during DSHS office hours. The office hours are 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m., Monday through Friday except for legal holidays. Contact the public disclosure coordinator in the appropriate office to arrange a time to examine the public record.

NEW SECTION

WAC 388-01-080 Does DSHS charge for examining or copying public records? (1) There is no fee for examining public records.

(2) DSHS charges one or more of the following fees for copies of public records:

(a) Fifteen cents per page for black and white photocopies of a record;

(b) The actual cost of manuals, blueprints, and other non-printed materials such as audio or video tapes; and

(c) The cost of postage, when items are mailed (see RCW 42.17.260).

(3) Government agencies, or DSHS clients involved in an administrative hearing procedure, may receive public records free of charge.

(4) DSHS may waive copying and postage fees if:

(a) Providing a copy of the record assists in managing a program; or

(b) The expense of billing exceeds the copying and postage costs.

NEW SECTION

WAC 388-01-090 When and how must DSHS respond to a public record request? Within five business days after receiving the public record request DSHS must review the public record, and:

(1) Provide the public record;

(2) Acknowledge receipt of the request, and give the DSHS date for response; or

(3) Deny the request in writing, noting the reason(s) for denial.

NEW SECTION

WAC 388-01-100 What if DSHS fails to respond to a public record request within five business days? If DSHS fails to respond to a public record request within five business days after receiving it, the person requesting the public record:

(1) Should consider the request denied; and

(2) May petition for review of the denied request from the office that issued the denial. Contact DSHS to obtain a petition form (DSHS 17-062(X)) at: DSHS Forms and Records Management Services, P.O. Box 45805, Olympia, WA 98504-5805, (360) 664-6120, or e-mail DSHSFormsRecordsMgmt@dshs.wa.gov. DSHS has two days after receiving the petition to respond. If DSHS upholds the denial, the decision is considered final.

NEW SECTION

WAC 388-01-110 When might DSHS need to extend the time to respond to a public record request? DSHS might need to extend the time to respond to a public record request to:

(1) Contact the individual requesting the public record to clarify the intent, scope or specifics of the request;

(2) Locate and gather the information requested;

(3) Notify an individual or organization affected by the request; and/or

(4) Determine whether the information requested is exempt and whether all or part of the public record requested can be released.

(5) If the individual requesting the public record fails to clarify the request, DSHS does not have to respond to the request.

NEW SECTION

WAC 388-01-120 What if an individual thinks DSHS is unreasonably delaying the release of a public record? If an individual requesting a public record thinks DSHS is unreasonably delaying the release of a public record, the individual may:

(1) Petition the public disclosure coordinator to release the public record before the date indicated on DSHS response (see WAC 388-01-090).

(2) File a lawsuit in superior court to require DSHS to release the public record.

NEW SECTION

WAC 388-01-130 What if the public record that is requested contains exempt information? If the requested public record contains exempt information, DSHS may:

(1) Release the nonexempt portion, explaining what exemption applies to the deleted portion of the record;

(2) Deny release of the entire record, sending a written explanation citing the exemption that applies to the denial; or

(3) Release information to law enforcement officers and United States immigration officials according to RCW 74.04.062.

NEW SECTION

WAC 388-01-140 What are an individual's options if DSHS denies a public record request? If DSHS denies a public record request, an individual may do any of the following:

(1) Petition for a review of the denied request from the denying public disclosure coordinator or a director approved designee (see WAC 388-01-100); or

(2) File a lawsuit for release of a public record in superior court in the county where the public record is located.

(a) DSHS must establish that its denial of a public record is legal.

(b) If the DSHS denial is reversed, the court may require DSHS to pay costs and attorney fees. DSHS may be fined five dollars to one hundred dollars a day for each day they denied the public record.

(3) Ask the office of the attorney general to review the public record request.

(a) Send a copy of the denied public record request and the DSHS written denial to:

Office of Attorney General
Public Records Review
P.O. Box 40100
Olympia WA 98504-0100

(b) The office of the attorney general will review the request and DSHS denial. The office of attorney general issues a written opinion as to whether the requested public record is excluded from disclosure.

NEW SECTION

WAC 388-01-150 If a public record contains personal information that identifies an individual or organization, other than the subject of the record, is that individual or organization notified? (1) If a public record contains personal information that identifies an individual or organization other than the subject of the requested public record, DSHS may notify that individual or organization.

(2) DSHS may send a written notice to the individual or organization if releasing the personal information could damage the individual or organization, government operations, or is not in the best interest of the public. The notice should include:

- (a) The record being requested;
- (b) The date DSHS intends to release the record; and
- (c) How the individual or organization can prevent release of the record (see RCW 42.17.330).

(3) DSHS should also send a written notice to the record requestor notifying them that:

(a) The individual or organization whose personal information is contained in the requested public record has been notified;

(b) DSHS expects a response from the individual or organization regarding disclosure of their personal information by a specified date; and

(c) Disclosure may be denied.

(4) DSHS will release the record by the specified date if no one objects.

(5) DSHS must notify the office of the attorney general when an individual or organization, other than the subject of a record, files a lawsuit to prevent release of the record.

NEW SECTION

WAC 388-01-160 Can an individual's representative request their public record? (1) An individual's attorney, legal guardian, or lay representative can request an individual's public record with a signed written release.

(2) The written release must include:

(a) The identity of the individual(s) or organization(s) authorized to receive the records;

(b) An identification of the public record(s), or part of the public record, that the individual wants released; and

(c) The date the release expires.

(3) DSHS may ask for identification verifying the representative's relationship to the individual.

NEW SECTION

WAC 388-01-170 Is DSHS required to create public records for requesters? (1) DSHS is only required to provide access to existing public records in its possession at the time of the request.

(2) DSHS is not required to collect information to create a public record that does not exist at the time of the public record request.

NEW SECTION

WAC 388-01-180 Can DSHS release public records to its offices and to outside agencies? (1) For the purposes of this chapter, outside agencies means, but are not limited to, group homes, mental health centers, drug and alcohol agencies, organizations, and other state agencies.

(2) DSHS may release public records to its offices and to outside agencies when the information relates to the administration of DSHS programs unless exempt by 45 C.F.R. 205.50 or other law.

(3) If an outside agency requests a public record for reasons other than information that relates to the administration of DSHS programs, the outside agency must have the individual's written authorization.

(4) Outside agencies receiving information are subject to DSHS disclosure laws.

NEW SECTION

WAC 388-01-190 Who should be contacted to review an interpretive or policy statement index, or to get a copy of the documents? DSHS issues administrative policy statements that apply to the whole department. Administrations may issue policies and interpretive statements that relate to their own programs. See RCW 34.05.010.

(1) To receive a copy of a DSHS administrative policy, send a written request to: Office of Legal Affairs, Rules and

Policies Assistance Unit, P.O. Box 45850, Olympia, Washington 98504-5850.

(2) To receive a copy or review a specific administration's policies or interpretive statements send a written request to the administration.

NEW SECTION

WAC 388-01-210 How can an individual get an index of DSHS significant decisions? (1) The DSHS board of appeals reviews and selects orders then create an index of significant decisions that substantially affects DSHS performance (see RCW 42.17.260).

(2) The index should:

- (a) Be divided into program categories;
- (b) Contain a copy or synopsis of the order; and
- (c) Be updated, as needed.

(3) An individual can inspect or request a copy of the index by contacting the board of appeals located at:

Board of Appeals
Blake Office Park
4500 - 10th Avenue Southeast
Lacey, WA 98503-5803
(360) 664-6100

Mailing address:
Board of Appeals
P.O. Box 45803
Olympia, WA 98503-5803

(4) An individual may ask the board of appeals to index an order as a significant decision by sending a written request with a copy of the order to the mailing address.

NEW SECTION

WAC 388-01-220 How are petitions for declaratory orders filed? (1) First, read the information on declaratory orders in RCW 34.05.240 and WAC 10-08-250, 10-08-251, and 10-08-252.

(2) Next, file the petition with the Rules and Policies Assistance Unit; DSHS; P.O. Box 45850; Olympia, WA 98504-5850.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-320-010	Purpose.
WAC 388-320-030	Establishment of department.
WAC 388-320-100	Public records available.
WAC 388-320-110	Public records officer.
WAC 388-320-115	Disclosure coordinator.
WAC 388-320-130	Request for disclosure of a public record.
WAC 388-320-132	Preserving requested records.

WAC 388-320-133	Approval or denial of request.
WAC 388-320-135	Disclosure to client's representative.
WAC 388-320-140	Fees—Inspection and copying.
WAC 388-320-170	Protection of public records.
WAC 388-320-205	Disclosure procedure.
WAC 388-320-210	Remedy for review of denial of disclosure.
WAC 388-320-220	Exemptions to public records disclosure.
WAC 388-320-225	Qualifications on nondisclosure.
WAC 388-320-235	Disclosure for program purposes.
WAC 388-320-240	Disclosure for other than program purposes.
WAC 388-320-375	How do I file petitions for declaratory orders?
WAC 388-320-450	Interpretive and policy statements roster and index.
WAC 388-320-460	Final adjudicative and declaratory order index.

WSR 99-11-095

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed May 19, 1999, 10:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 99-07-132.

Title of Rule: Chapter 16-212 WAC, Grain, hay, beans and peas—Inspection fees.

Purpose: Establishes fees for services performed by the department in sampling, testing, grading, weighing and inspecting grain, pulses and similar commodities.

Statutory Authority for Adoption: RCW 22.09.790.

Statute Being Implemented: Chapter 22.09 RCW.

Summary: Adjust the grain inspection program schedule of fees to reflect a 3.32% increase in hourly based fees and in the unit fees for submitted grain and commodity samples. The title of the WAC will be changed for clarity.

Reasons Supporting Proposal: Recoup a portion of the additional operational expenses due to changes in insurance rates, required equipment purchases and legislatively mandated salary increases.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Randall R. Deike, Olympia, (360) 902-1921.

PROPOSED

Name of Proponent: Washington State Department of Agriculture (WSDA), governmental.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Fee increases are within fiscal growth factor limits.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: This rule establishes the schedule of user fees for the grain inspection program. The fees are the sole source of funding for program activities and the revenues generated must be adequate to support the services provided. The proposed increase is expected to generate approximately \$30,000 in additional revenues and will offset, in part, increased insurance rates for fiscal year 1999, a legislatively mandated salary increase effectively July 1, 1999, and the purchase of equipment required to maintain USDA authorizations to provide official inspection services.

The proposed change, targeted to become effective September 1, 1999, will raise hourly, overtime, standby and callback charges and fees assessed for inspection of submitted grain and graded commodity samples by the allowable growth rate of 3.32% for fiscal year 2000. The proposal also changes the title of chapter 16-212 WAC from "Grain, hay, beans and peas—Inspection fees" to "WSDA grain inspection program—Fee schedule" for clarity.

Proposal Changes the Following Existing Rules: Increase hourly based fees and unit fees for submitted grain and commodity samples by 3.32%. The title of the WAC will be changed for clarity.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Fees for WSDA grain inspection program services are also approved under USDA authorizations and must be applied uniformly to all applicants for service. The proposed fee increase will generate less than a 1% increase in program revenue per year. Additional revenue per fiscal year is projected at \$30,000 for a total of approximately \$4.3 million (based on fiscal year 1998 inspection services). The financial impact on small businesses will be minimal.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption.

Hearing Location: Natural Resources Building, 1111 Washington Street, 2nd Floor, Conference Room 259, Olympia, WA 98504, on July 8, 1999, at 1:00 p.m.

Assistance for Persons with Disabilities: Contact Cathy Jensen by July 7, 1999, TDD (360) 902-1996, or (360) 902-1976.

Submit Written Comments to: Dannie McQueen, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, fax (360) 902-2092, by July 8, 1999, at 5:00 p.m.

Date of Intended Adoption: July 20, 1999.

May 17, 1999

Robert W. Gore
Assistant Director

Chapter 16-212 WAC

~~((GRAIN, HAY, BEANS AND PEAS—INSPECTION FEES)) WSDA GRAIN INSPECTION PROGRAM—FEE SCHEDULE~~

AMENDATORY SECTION (Amending Order 1836, filed 7/2/84)

WAC 16-212-010 Definitions. (1) "Department" means the Washington state department of agriculture.

(2) "Ton" means two thousand pounds avoirdupois.

(3) "Overtime" means any time worked on Saturdays, Sundays, or holidays and all time worked before ((8:00 a.m.)) or after ((5:00 p.m. on)) the regularly scheduled working hours, Monday through Friday, unless alternate work schedules have been established at inspection sites.

(4) "Fees" means any charge made by the department for inspection and handling of any commodity or for services related to weighing or storage of grains or commodities.

(5) "Occasional work stoppage" means the union stop work meetings usually held once per month.

AMENDATORY SECTION (Amending WSR 98-12-058, filed 5/29/98, effective 6/29/98)

WAC 16-212-030 General provisions for hourly charges.

(1) Straight time, rate per hour ((**\$25.49**)) **\$26.34**

This hourly rate will be applied in any situation where the fees generated ((~~fare~~)) are not sufficient to provide revenue ((~~equivalent to the published hourly rate~~)) equivalent to the published hourly rate, per employee, including applicable supervisory and clerical hours, and where no other hourly rate, fee, guarantee of expenses or contractual agreement exists or is specified in this schedule of fees and charges. Whenever the lot size or workload is not of sufficient size to generate revenue equivalent to the published hourly rate, per employee, an additional fee shall be assessed so that total revenue generated is equal to the published hourly rate, per employee: Provided, That such revenue insufficiency may be established on the basis of the average hourly revenue generated at the worksite over the Monday through Sunday work week, upon written request of the applicant for service. In the absence of such request, fees shall be assessed on a daily basis.

(2) Overtime, and night shift rate per hour ((**\$6.65**)) **\$6.87**

Whenever a service is requested before or after regularly scheduled working hours, Monday through Friday, or any time on Saturdays, Sundays or holidays, a fee of ((**\$6.65**)) **\$6.87** per hour, per employee, including applicable supervisory and clerical hours, shall be charged in addition to the regular inspection and weighing fees.

(a) Requests for service on Saturdays, Sundays, or holidays, or for work shifts other than the inspection office's established standard workday hours, Monday through Friday, must be received by the inspection office no later than two

hours prior to the inspection office's established daily closing time of the last regularly scheduled working day prior to the requested service. When the request is not received within the established time frames, service will be provided where personnel are available, but an additional fee of ~~((4.42))~~ \$4.57 per hour, per employee, will be assessed for the hours of the requested service.

(b) Requests for service which are beyond the scope or volume normally provided at an inspection site must be received by the inspection office no later than two hours prior to the inspection office's established daily closing time of the last regularly scheduled working day prior to the date of the requested service in order for the department to guarantee to have adequate staff available to perform the service.

(c) Whenever an employee is notified after leaving the worksite to return to a worksite after the inspection office's established standard workday hours, or on a Saturday, Sunday or holiday, two additional hours per employee, will be charged at the rate of ~~((11.10))~~ \$11.47 per hour and added to other fees charged.

(d) Scheduled night shifts.

(i) The department must be given at least seven calendar days notice, in writing, to establish a scheduled night shift. If the full seven-day notice is not given, a fee of ~~((6.65))~~ \$6.87 per hour, per employee(~~(H)~~), will be assessed until the seven day notice period has elapsed.

(ii) The department shall be given at least twenty-one calendar days' notice, in writing, of cancellation of any scheduled night shift operation. If the full twenty-one day notice is not given, a fee of ~~((6.65))~~ \$6.87 per hour, per employee, will be assessed for each hour under the regular night shift schedule that would have been worked until the twenty-one day notice period has elapsed.

(3) Standby rate per hour ~~((27.85))~~ \$28.77

Whenever a service is requested before or after the inspection office's established standard workday, Monday through Friday or anytime on Saturdays, Sundays or holidays, and service cannot be performed through no fault of the department, four hours at the standby rate of ~~((27.85))~~ \$28.77 per hour, per employee, shall be charged. Additional charges at the standby rate per hour, per employee shall be assessed for all hours over four that continue to be staffed at the request of the applicant. Whenever a service is requested before or after working hours, Monday through Friday or anytime on a Saturday, Sunday or holiday, and a cancellation of the request is not received two hours prior to the inspection office's established daily closing time of the last regularly scheduled working day prior to the requested service, the four hour standby charge per employee, will be assessed.

(4) Guarantee of expense. When a service is requested that requires assignment of personnel at a facility where the volume of work at the established fees is not adequate to pay the cost of providing the service, a guarantee of the expense of providing the service is required. These facilities may enter into agreement with the department at guaranteed staffing levels and negotiated minimum hours and unit fees.

(5) Official commercial inspection services may be provided, on-site, at the applicant's request. When appropriate space, equipment and security can be provided, the program

is able to provide appropriate licensed personnel, and a guarantee of expense can be negotiated.

AMENDATORY SECTION (Amending WSR 98-12-058, filed 5/29/98, effective 6/29/98)

WAC 16-212-060 Official inspection and/or weighing fees under the United States Grain Standards Act.

(1) Combination inspection and weighing fees. Ships, barges, unit trains and transfers of bulk grain.

(a) From vessel to elevator, per ton \$ 0.128

(b) Bin transfers, per ton \$ 0.128

(c) From elevator to vessel, per ton \$ 0.128

(d) From railcars of a unit train, sampled by diverter samplers, batch weighed and inspected under the subplot inspection plan in units of not less than five cars, per ton \$ 0.128

(2) Inspection only of railroad boxcars, open hopper-type cars ~~((for covered hopper-type cars))~~, original inspection. Sampling only services are available at the inspection only rates shown in this fee schedule.

(a) Carlots sampled by United States Department of Agriculture approved diverter type mechanical samplers, per car \$ 15.50

Batch grades may contain up to the maximum number of cars allowable under Federal Grain Inspection Service regulations/instructions. The per car sampling charge will be assessed for each car included in the batch grade.

(b) When sampled by United States Department of Agriculture approved grain trier, original and subsequent original inspections, per car ~~[\$24.00]~~ [\$24.50]

(3) Inspection only of trucks, per truck \$ 15.00

(4) Reinspections of railroad boxcars, open ~~((hopper))~~-type cars, covered hopper-type cars, ship subplot samples, barge lots, truck lots, and submitted samples.

(a) When based on an official file sample, per reinspection \$ 9.00

(b) When based on a new sample, for railcars(~~(H)~~) only, per reinspection \$ 24.00

(c) When based on a new sample, for trucks ~~((only))~~ only, per reinspection \$ 15.00

(d) FGIS approved per factor reinspections will be provided at the applicable file sample or new sample rate listed in this section.

(5) Submitted samples,

~~((a))~~ (a) Standardized grains, except canola per inspection ~~((7.50))~~ \$7.75

(b) Canola, per inspection ~~((13.75))~~ \$14.20

(6) Fees for laboratory determination of erucic acid, and/or glucosinolate, and/or oil content of canola, identical to the fees assessed by the Federal Grain Inspection Service.

(7) Factor analysis and/or certification.

PROPOSED

(a) Nongrade determining factors added to existing certificates, or requested on ship subplot analyses, that do not affect the grade: per factor \$ 2.50

Submitted sample certificates of grade for barley may show, on request, dockage to the nearest one-tenth percent without additional charge. Submitted sample certificates of grade for wheat may show, on request, foreign material when it is not a grade determining factor, without additional charge.

(b) Factor certification only (maximum of one factor), per certificate \$ 2.50

(i) Additional factors added to a factor certificate, per factor \$ 2.50

(A maximum of \$7.50 will be charged for factor only certification.)

(ii) When submitted samples are not of sufficient size to provide official grade analysis, obtainable factors will be provided, upon request of the applicant, at the factor only rate.

(8) Official analysis of constituents (protein, oil, etc.) by near-infrared transmittance.

(a) Official constituent analysis of wheat, soybeans, or other FGIS approved commodities when in conjunction with official inspection for grade, per test \$ 6.25

(b) Official constituent analysis of wheat, soybeans, or other FGIS approved commodities when not in conjunction with official inspection for grade, per test \$ 8.50

When based on official sample (including new sample reinspection) add the applicable sampling charges.

(c) Official constituent analysis of wheat, soybeans, or other FGIS approved commodities: Submitted sample or reinspection based on official file sample \$ 8.50

(9) Inspection of bagged grain, per cwt \$ 0.0624 effective June 30, 1998; \$ 0.065 effective July 1, 1998.

(10) Checkloading bagged grain, per hour, per employee ((25.49)) \$26.34

(11) Waxy corn determination, on request, per determination \$ 12.75

(12) FGIS approved mycotoxin testing.

(a) Screening or quantitative testing determinations, based on official sample, except thin layer chromatography, per test \$ 37.50

(b) Submitted samples, screening or quantitative determinations, except thin layer chromatography, per test ((25.49)) \$26.34

(c) Reinspection, based on official file, screening or quantitative, except thin layer chromatography, per test ((25.49)) \$26.34

(d) Reinspection, based on a new sample, screening or quantitative, except thin layer chromatography, per test \$ 37.50

(e) Thin layer chromatography determinations will be assessed at a rate identical with the fees charged by the Federal Grain Inspection Service((F)).

(13) Stowage examinations - ships, barges((F)), or vessels.

(a) Per stowage space or tank, or return to stowage space or tank((F)), per examination \$ 24.00

(b) Initial inspection, minimum charge \$ 120.00

(c) Subsequent inspections, minimum charge \$ 72.00

(d) Travel time, two hour minimum, per hour, per employee ((25.49)) \$26.34

Note: Stowage examinations may be conducted on vessels at anchor, at the convenience of the designated grain inspection area office, on request. Inspections at anchor will be made during daylight hours only, and only under safe working and weather conditions. The applicant is responsible for providing safe transportation to and from the vessel by licensed tug or water taxi. Two vessel or ship's agent representatives will be provided to accompany each inspector providing stowage exam services. Tanker inspections may require additional inspection personnel. When appropriate, hourly and/or minimum charges listed in the fee schedule will be assessed to the inspection and travel time charges shown in this section.

(e) A minimum of four hours per inspector at the applicable overtime rate shall also be assessed on Saturdays, Sundays, or holidays.

(14) Other stowage examinations.

(a) Sea van-type containers (when checkloading is not required) \$ 8.10

(b) Railroad cars, trucks and other containers, not in conjunction((F)) with loading, per container \$ 8.10

(15) Diverter-type samples, per hour, per employee ((25.49)) \$26.34

(16) Ship samples((F));

(a) Ship composite samples.

(i) Initial set of samples to applicant (maximum of three samples) no charge

(ii) Additional samples or samples at the request of other interested parties, per sample (two sample minimum when not requested with initial set) .. \$ 5.25

(17) Weighing services.

(a) Class X weighing services.

(i) From railroad boxcars, open or covered hopper-type cars (without inspection required) or vessels to elevator (grain only), per ton \$ 0.107

(ii) From elevator to boxcars, open or covered hopper-type cars, barges (without inspection((F)) required) or vessels (without inspection, grain only), per ton \$ 0.107

(iii) Bin transfers (grain only), per ton \$ 0.107

(iv) Trucks, per truck or weight lot \$ 7.50

(b) Class Y weighing services, per hour, per employee	((\$25.49)) <u>\$26.34</u>
(c) Checkweighing of bagged grain, per hour, per employee ((\$25.49)) <u>\$26.34</u>	
(d) Scale certification/checktesting of official weighing scales.	
(i) Weights and measures scale specialist, per employee-hour	((\$33.75)) <u>\$34.87</u>
(ii) Grain inspection personnel, per hour, per employee	((\$25.49)) <u>\$26.34</u>

AMENDATORY SECTION (Amending WSR 98-12-058, filed 5/29/98, effective 6/29/98)

WAC 16-212-070 Official services under the Agricultural Marketing Act of 1946.

(1) Inspection or analysis of graded and nongraded commodities.

(a) Inspection of bagged commodities at inspection points, per cwt

effective June 30, 1998; \$0.065 effective July 1, 1998.

(b) Bulk commodity inspection at inspection points, per ton

(c) Minimum charge for bulk or bagged commodities (one hour)

(d) Submitted sample inspection, per sample

(2) Weighing and combination inspection/weighing services for bulk commodities.

(a) Weighing only, other than grain, per ton

(b) Combination inspection/weighing of bulk commodities under federal grade standards, state standards, or for factor determinations, per ton ..

(c) Weigh grain by-products into portable containers including fitness examination of the container, weigh and sample the by-product (thirty ton maximum)

(3) Factor analysis.

(a) Moisture only

(b) Additional factors, the determination of which are not required to establish grade, or otherwise not required by regulation, added to an existing certificate, per factor

(c) Certification, factor only (maximum two factors), per certificate

(d) Additional factors added to ((~~a~~)) a factor certificate, per factor

(A maximum of \$13.75 will be charged for grading factors only.)

(e) Analysis of rapeseed, mustard seed, confectionary sunflower seed, safflower seed, or other commodities with established FGIS factor only inspection procedures, per certificate

((~~\$13.75~~)) \$14.20

(f) Sampling only fees identified in subsection (4)(a) and (b) of this section will be assessed in addition to the factor analysis fees for rapeseed, mustard seed, confectionary sunflower seed, safflower seed, or other commodities with established FGIS factor only inspection procedures when official sampling is requested.

(4) Sampling only, bulk commodities.

(a) Trucks or containers, per carrier

(b) Boxcars, open or covered hopper-type cars, per car

(5) Processed commodity and defense personnel support center (DPSC) inspection fees.

(a) Per hour per employee, two hour minimum((,))

((~~\$25.49~~)) \$26.34

(b) In addition to the charges, if any, for sampling and other requested service, a fee will be assessed for each laboratory analysis or test identical with the amount charged by the Federal Grain Inspection Service for laboratory tests performed under authority of the Agricultural Marketing Act and for any postage or other costs of mailing not included in these fees.

(6) Sanitation inspections((~~for~~)).

(a) Initial inspection

(b) Reinspections, four hour minimum, per hour, per employee

((~~\$25.49~~)) \$26.34

(7) Stowage examinations under the Agricultural Marketing Act will be provided as per WAC 16-212-060 (13) and (14).

(8) Mycotoxin testing fees.

(a) Screening or quantitative testing determinations, except thin ((~~layer~~ ~~later~~)) layer chromatography((~~for~~)), per test

\$ 37.50

(b) Thin layer chromatography determinations will be assessed ((~~at~~)) at a rate identical with the fees charged by the Federal Grain Inspection Service.

(9) Falling numbers determinations, per determination

\$ 12.75

Liquefaction number, per determination

\$ 0.50

AMENDATORY SECTION (Amending WSR 98-12-058, filed 5/29/98, effective 6/29/98)

WAC 16-212-080 Miscellaneous fees.

(1) Mailing of samples shall be charged at ((~~the~~)) the actual mailing costs, minimum charge

\$ 2.00

(2) Fee((~~for~~))s for pickup of samples on routes established by the department, per sample

\$ 0.60

PROPOSED

(3) Fees for services performed at places other than established grain and commodity inspection points.

(a) Travel time, per employee, will be charged at the applicable straight time or overtime rate from office to inspection point and return.

(b) Mileage will be charged at the current general administration private vehicle mileage reimbursement rate, except where suitable transportation is provided by the applicant. Mileage is assessed on a per call, door to door basis and will be charged in addition to all other inspection fees, hourly rates and applicable charges.

(c) If the travel is of sufficient duration to require payment of subsistence or per diem to the employee, an amount equal to the established subsistence and/or per diem rate (WAC 82-28-040 and 82-28-050) shall be assessed, except where applicable subsistence and lodging are furnished, or paid, by the applicant.

(d) Incidental costs of telephone, mailing, etc. shall be at ((the)) the actual cost(()).

(e) Facsimile transmissions, per page \$ 1.00

(4) Certificate charges for certificates under the United States Grain Standards Act or the Agricultural Marketing Act of 1946.

(a) Divided original certificates, per certificate \$ 1.50

(b) Extra copies of inspection, protein, weight, falling number, commodity or aflatoxin certificates, per copy \$ 3.00

(5) Phytosanitary ((certificates)) certificates

(a) When performed in conjunction with official inspection, per certificate \$ 6.75

(b) When performed without official inspection, add sampling fee, per hour((.)), per employee $(\$25.49) \26.34

(6) Timely payment. Payment of fees and charges is due within thirty days after the date of the statement.

(a) If payment is not received within thirty days, service may be withheld until the delinquent account is paid; or

(b) In the case of such delinquent accounts, cash payment for subsequent service may be required; and

(c) A penalty of twelve percent per annum shall be assessed on the delinquent account balance.

AMENDATORY SECTION (Amending WSR 98-12-058, filed 5/29/98, effective 6/29/98)

WAC 16-212-082 Fees for services performed under state regulation. (1) Inspection of commodities under state of Washington standards or other state, national, or international standards or criteria specified by the applicant, except as noted in this section.

(a) Cultivated buckwheat, safflower, submitted sample inspection for factors or grade, per sample \$ 7.50

(b) Rapeseed (except Canola), other commodities not listed above; inspection under Washington state standards or other specified standards or criteria, submitted sample inspection for factors or grade, per sample..... $(\$13.50) \13.95

(c) Sampling only fees will be assessed at the rates shown in WAC 16-212-070 (4)(a) and (b) and will be assessed in addition to the sample inspection fee when lot inspection is requested.

(d) Inspection of bagged commodities per cwt \$ 0.0624 effective June 30, 1998; \$ 0.065 effective July 1, 1998.

(e) Combination inspection and weighing fees assessed at the rates shown in WAC 16-212-060 ((1)(a), (b), (e), and (d.)) (1)(a), (b), (c), and (d).

(2) Cracked corn, corn screenings, and mixed grain screenings will be inspected and/or weighed at applicable rates shown in WAC 16-212-060.

(3) Unofficial analysis of constituents (protein, oil, etc.) by near-infrared transmittance provided at the applicable rates shown in WAC 16-212-060.

(4) Fees for laboratory analysis of commodities covered by this section, or for the analysis of constituents or conditions of grains or commodities inspected under WAC 16-212-060 or 16-212-070 not provided for in the official standards will be assessed at the current rates established by the federal, state or private laboratory providing the analysis. These fees will be assessed in addition to all other inspection and sampling fees, hourly rates and applicable charges.

Note: This fee is applied in addition to the inspection fee for grading under state standards.

(5) For other laboratory analysis not identified herein, a fee will be assessed for each test or analysis identical with the amount charged by USDA or Washington state agency laboratories.

WSR 99-11-096

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed May 19, 1999, 10:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 99-03-108.

Title of Rule: Rules relating to chapter 16-403 WAC, Standards for apples marketed within Washington and chapter 16-461 WAC, Inspection requirements for fruits and vegetables.

Purpose: Require all Red Delicious and Delicious varieties of apples to be certified for quality and condition on a twelve month basis, and if not entering channels of commerce within twenty-one days following the original inspection, will require recertification for the minimum firmness requirements prior to entering the channels of commerce. Eliminate the general release date established by the Deli-

cious Maturity Committee of the Washington State Horticultural Association for Red Delicious and Delicious varieties of apples and require soluble solids testing until October first of each year.

Statutory Authority for Adoption: Chapter 15.17 RCW.
Statute Being Implemented: RCW 15.17.030.

Summary: Agency response to industry request and concerns in regards to the firmness requirements for the Red Delicious and Delicious varieties of apples. The revisions will improve and enhance the marketing of fresh Washington Red Delicious and Delicious apples. The consuming public will be served by improved product quality and condition.

Reasons Supporting Proposal: Request from industry, Washington State Horticultural Association.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Jim Quigley, Olympia, Washington, (360) 902-1833.

Name of Proponent: Washington State Horticultural Association, public.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: Amendments to the existing rules, chapter 16-403 WAC, Standards for apples marketed within Washington and chapter 16-461 WAC, Inspection requirements for fruits and vegetables, will assist in eliminating the lower levels of firmness for the Red Delicious and Delicious varieties of apples from entering the marketplace and will provide the consumer with a higher level of quality and condition for these varieties.

Proposal Changes the Following Existing Rules: Red Delicious and Delicious varieties will be required to be certified for quality and condition on a twelve month basis. Apples of the Red Delicious and Delicious varieties that have not entered channels of commerce within twenty-one days following the original date of inspection as indicated by a state lod [lot] I.D. stamp, will require recertification to meet the minimum firmness requirement. The general release date established by the Delicious Maturity Committee of the Washington State Horticultural Association for Red Delicious and Delicious varieties will be eliminated. These varieties will be required to be soluble solids tested with a refractometer until October first of each year.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

On January 15, 1999, the Washington State Horticultural Association petitioned the Washington State Department of Agriculture (WSDA) to amend current rules to impose stricter inspection requirements for Red Delicious and Delicious apples at packing houses. The request was prompted by a recommendation from the Hort Association's Grade and Pack Committee. The intent of the proposal is meant to improve and enhance the marketing of fresh Washington Red Delicious and Delicious apples. The consuming public will also be served by an improved product, both in terms of quality and condition.

Under current rules, Red Delicious and Delicious apples in regular storage may be packed and shipped under WSDA's

quality control program (QCP). Under QCP, an agriculture inspector randomly visits packing facilities and inspects apples being packed. A facility then ships the packed fruit by issuing a certificate of compliance, which indicates the fruit packed and ready for shipment is in compliance with all grade requirements and regulations.

During regular storage periods, United States condition standards for export is not a requirement unless requested by a shipper. In addition, minimum firmness requirements is randomly verified during the regular storage period, either on the packing line during a quality control inspection or on the shipping dock just prior to the fruit being loaded for shipment.

However, controlled atmosphere stored apples must be inspected, certified and identified with a WSDA state lot identification number and a WSDA assigned facility license number. United States condition standards for export is mandatory for apples to qualify for controlled atmosphere storage.

The proposed rule would require all Red Delicious and Delicious varieties of apples in regular storage to be inspected and certified for grade and condition on a year-round basis, which means that all packed fruit will require an inspection, certification and be identified with a WSDA state lot identification number.

The proposed rule change would affect potentially one hundred and nine apple shippers and packers; fourteen of those (or approximately 12.8% of the shippers and packers) are identified as small businesses as defined in chapter 19.85 RCW, the Regulatory Fairness Act, *depending* upon the amount of Red Delicious or Delicious apples they pack during a given year.

The WSDA collected historical data on random inspections of Red Delicious and Delicious apples previously packed, the number of cartons certified and the inspection cost to packers/shippers and compared the random costs of inspection and certification versus the cost of 100% inspection and certification. The potential cost of 100% inspection varied; i.e., one small business would have paid as little as a \$77.28 difference under an increased certification program, while one of the largest businesses would have paid a \$6,568.80 difference.

Averaging five of the small businesses out of thirteen that may be affected, the average cost increase would be an approximate \$280.00 to comply with the proposed rule to implement 100% inspection and certification. In contrast, WSDA averaged 10% of the largest businesses and what their cost would have been. The net result to large business would have been an average increase of \$5,142.00. (Reference RCW 19.85.040(1).)

The data on costs that would reduce the net affect on all companies is data that cannot be projected with certainty. The first variable that could raise or, conversely, lower cost to a packer/shipper is the amount of Red Delicious and Delicious apples a company will pack and ship in any given year. The second variable that could offset the inspection cost is the profit ratio realized by a company due to the increased quality and condition of apples.

Using the guidelines "facilitating regulatory fairness" the average threshold of an acceptable increase to small business

PROPOSED

appears to be in the \$50.00 range. Since the average increase to a small business could potentially exceed the acceptable threshold level, the next step in the analysis is whether the impact of the proposed rule could be mitigated.

Summary: The Washington State Department of Agriculture is unable to mitigate any economic impact on businesses, whether large or small, if the proposed rule is implemented because:

1. The department was petitioned by industry to promulgate rule amendments, a copy of which is in the official rule file. In accordance with RCW 34.05.330, the department initiated the rule-making process within sixty days by filing a CR-101, notice of intent, on January 20, 1999.

2. The department cannot mitigate by reducing inspections because the industry is requesting increased inspections.

3. The annual cost of inspections depends upon variable factors:

- The amount of Red Delicious and Delicious apples packed and shipped per company per year;
- The offset of increased profit per company due to the enhanced quality of the fruit marketed;

4. The budget to pay Washington State Department of Agriculture inspectors is based on fee-for-service. The program does not receive general-fund dollars to fund fruit and vegetable inspectors.

A copy of the statement may be obtained by writing to Jim Quigley, Program Manager, WSDA Commodity Inspection, P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 902-1833, fax (360) 902-2085.

Section 201, chapter 403, Laws of 1995, does not apply to this rule adoption. The Washington State Department of Agriculture is not a listed agency under section 201.

Hearing Location: On June 23, 1999, at 10:00 a.m., at the State Department of Agriculture Building, 21 North 1st Avenue, Yakima, WA 98902; and on June 24, 1999, at 10:00 a.m., at the DoubleTree Hotel, 1225 North Wenatchee Avenue, Wenatchee, WA 98801.

Assistance for Persons with Disabilities: Contact Cathy Jensen by June 22, 1999, TDD (360) 902-1996.

Submit Written Comments to: Jim Quigley, Program Manager, WSDA Commodity Inspection, P.O. Box 42560, Olympia, WA 98504-2560, fax (360) 902-2085, by June 28, 1999.

Date of Intended Adoption: June 29, 1999.

May 17, 1999
Robert W. Gore
Assistant Director

AMENDATORY SECTION (Amending WSR 95-13-038, filed 6/14/95, effective 7/15/95)

WAC 16-461-010 Inspection certificate and/or permit required. (1) No person shall ship, transport, accept for shipment, or accept delivery of, any commercial lot of the following agricultural products without an inspection and the issuance of a certificate and/or a permit by the plant services division of the department of agriculture allowing such shipment, movement or delivery:

(a) Apricots - in closed or open containers for fresh market.

(b) Italian prunes - in closed or open containers for fresh market.

(c) Peaches - in closed or open containers for fresh market.

(d) Cherries - in closed or open containers for fresh market: Provided, That no permit shall be issued on cherries infested with live cherry fruit fly larvae.

(e) Apples - in closed or open containers for fresh market: Provided, That apples may be shipped or transported if accompanied by a certificate of compliance issued by the shipper or packer of apples having the approval of the director to issue the certificates of compliance.

Apples of the Red Delicious and Delicious varieties must be certified as to quality and condition and must meet all the requirements of chapter 16-403 WAC, Standards for Apples Marketed Within Washington. Apples of the Red Delicious and Delicious varieties not allowed to enter channels of commerce within twenty-one days following the original date of inspection as indicated by a state lot stamp, will require recertification for meeting the minimum firmness requirement as stated in WAC 16-403-142.

(f) Pears - in closed or open containers for fresh market: Provided, That pears may be shipped or transported if accompanied by a certificate of compliance issued by the shipper or packer of pears having the approval of the director to issue the certificates of compliance.

(g) Asparagus - in closed or open containers for fresh market: Provided, That asparagus may be shipped or transported if accompanied by certificates of compliance issued by the shipper or packer of the asparagus, having the approval of the director to issue the certificates of compliance.

(h) Apples in containers or bulk, for processing: Provided, That apples for processing may be shipped or transported if accompanied by a certificate of compliance issued by the shipper of apples having the approval of the director to issue the certificates of compliance: Provided further, That apples for processing entering intrastate commerce shall not require a permit.

(i) Pears in containers or bulk, for processing: Provided, That pears for processing may be shipped or transported if accompanied by a certificate of compliance issued by the shipper of pears having the approval of the director to issue the certificates of compliance: Provided further, That pears for processing entering intrastate commerce shall not require a permit.

(2) **Exemptions - Fruits and vegetables listed in WAC 16-461-010 shall be exempted from requirements for inspection and issuance of a certificate or permit:**

(a) When the product is being transported from the premises where grown or produced to a horticultural facility other than wholesale or retail for the purpose of storing, grading, packing, packaging, labelling, or processing; prior to entering commercial channels for resale;

(b) When transportation is between horticultural facilities other than those facilities which sell at wholesale or retail level, for the purposes set forth in (a) of this subsection;

(c) When sold or transported to a fruit/produce stand within the zone of production, not to exceed daily quantities of two thousand pounds net weight of a single commodity nor six thousand pounds net weight of any combination of commodities other than cherries, listed in subsection (1) of this section, when on a single conveyance, provided that such exempt sales by the producer within a farmer's market shall not be restricted to the zone of production;

(d) When daily quantities do not exceed one hundred pounds net weight of dark varieties of sweet cherries which are sold for home use and not for resale, and the containers are marked "not for resale" in letters at least one-half inch in height.

(3)(a) Any shipper or packer of apples, apricots, cherries, pears, peaches, prunes, or asparagus may petition the director for authority to issue certificates of compliance for each season. The director may issue certificate of compliance agreements, granting such authority, on such terms and conditions as he may deem appropriate. The authority shall be limited to the issuance of certificates of compliance for apples, apricots, cherries, pears, peaches, prunes, and asparagus under the applicant's direct control or being handled at the shipper's or packer's facilities.

(b) The certificate of compliance shall be issued at time of shipment by the shipper or packer authorized to do so: Provided, That the apples, pears, cherries, and asparagus about to be shipped or transported are in full compliance with the requirements of chapter 15.17 RCW, regulations adopted thereunder and administrative directives of the director: Provided further, That apricots, cherries, peaches, prunes, or pears about to be shipped or transported are in full compliance with an existing federal marketing order requiring quality and condition certification and Washington state lot identification or federal-state lot identification;

Cherries of the dark sweet varieties shall be certified as to quality, condition, and size and shall meet all of the requirements of chapter 16-414 WAC, Cherries.

(c) The director's approval to issue certificates of compliance may be suspended, revoked, or denied for cause, subject to RCW 34.05.422(3) and that cause shall be the shipper's or packer's failure to comply with the requirements of subsection (3)(b) of this section, or for the shipper's or packer's actions which impede the department's abilities to ascertain full compliance with requirements of chapter 15.17 RCW or rules adopted thereunder, or for violation of the terms of the certificate of compliance agreement. The period of any suspension shall be determined by the director and shall be commensurate with the seriousness of the violation.

(d) Any shipper or packer whose authority to issue certificates of compliance has been suspended, revoked, or denied by the director shall be subject to those provisions of chapter 15.17 RCW and the regulations requiring the issuance of a shipping permit by the director before apples, apricots, cherries, pears, peaches, prunes, and asparagus may be shipped or transported.

(e) Certificates of compliance shall be on forms approved and issued by the director of agriculture.

(f) Any shipper or packer authorized to issue certificates of compliance shall deposit with the director of agriculture at the regular base fee equivalent to that charged by the director

for a shipping permit, for each certificate of compliance issued by the authorized shipper or packer. The base fees shall be deposited with the director of agriculture in the same manner as fees for shipping permits.

AMENDATORY SECTION (Amending Order 1892, filed 6/25/86)

WAC 16-403-141 Red Delicious, Delicious, Golden Delicious—Minimum soluble solids. ((Prior to the general release date)) For harvest of the crop of the current growing season, apples of the Red Delicious and Delicious varieties cannot be shipped prior to October 1, unless they have at least ten percent soluble solids as determined by refractometer. Apples of the Golden Delicious varieties, cannot be shipped prior to the general release as established by the Delicious maturity committee of the Washington state horticultural association((, shipment shall not be allowed of apples of the Red Delicious and Delicious varieties having less than)) unless they have at least ten and one-half percent soluble solids and apples of the Golden Delicious variety having less than ten and one-half percent soluble solids as determined by refractometer.

PROPOSED

WSR 99-11-102

PROPOSED RULES

INSURANCE COMMISSIONER'S OFFICE

[Insurance Commissioner Matter No. R 98-20—Filed May 19, 1999, 11:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 98-22-041.

Title of Rule: Every category of health care provider.

Purpose: The rules are intended to implement RCW 48.43.045 by identifying health insurance practices that would violate the statute.

Other Identifying Information: Insurance Commissioner Matter No. R 98-20.

Statutory Authority for Adoption: RCW 48.02.060, 48.18.120, 48.20.450, 48.20.460, 48.30.010, 48.44.050, and 48.46.200.

Statute Being Implemented: RCW 48.43.045.

Summary: The proposed rules identify the standards for inclusion of every category of health care provider in the health care networks for health plans. Carriers are prohibited from excluding entire categories of health care providers based upon a finding that no service for the particular category is cost-effective or efficacious. Other issues relating to the offering of coverage that includes all categories of health care providers are clarified.

Reasons Supporting Proposal: Numerous questions have arisen about the way in which health plans incorporate the services of health care providers who were previously excluded from health plan participation. These rules are intended to address these questions.

Name of Agency Personnel Responsible for Drafting: John S. Conniff, P.O. Box 40255, Olympia, WA, (360) 664-

3786; Implementation and Enforcement: Bethany Weidner, P.O. Box 40255, Olympia, WA, (360) 664-8137.

Name of Proponent: Deborah Senn, Insurance Commissioner, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: Carriers are prohibited from excluding entire categories of health care providers based upon a finding that no service for the particular category is cost-effective or efficacious. Health plans may contain reasonable limits on individual services so long as such limitations are consistent with the statute. Carriers may use restricted health networks and are not required to include all providers within any particular category. Carriers may restrict coverage for certain categories of providers to those who have purchased these benefits as an optional rider. These provisions are intended to create uniform standards for including all categories of providers in health plans. In addition, these rules will respond to specific complaints from providers regarding the practices of some health carriers.

Proposal does not change existing rules.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

Background: The underlying statute, RCW 48.43.045, was adopted in April of 1995, the effective date was January 1, 1996. In December, the insurance commissioner issued an interpretation of the statute. In January of 1996, carriers filed a lawsuit over that interpretation. A long and complex legal history has followed.

Over the last several years, the commissioner and the staff of her office have held numerous and lengthy discussions with carriers, providers, and consumers regarding the statute and possible rules to clarify and implement the statute. In October of 1998, the commissioner issued a CR-101 announcing her intent to begin rule making in this area.

Is the rule required by federal law or federal regulation? This rule is not required by federal law or regulation.

What industry is affected by the proposed rule? The industry code that would be affected by the proposed rules includes hospital and medical service plans, industry code # 6324. In Washington, such plans are called health care service contractors (HCSCs) and health maintenance organizations (HMOs). It will also apply to group and blanket disability carriers, unless exempted by RCW 48.21.190, which fall under the classification of Accident and Health Insurance Companies, industry code # 6321.

List the specific parts of the proposed rule, based on the underlying statutory authority (RCW section), which may impose a cost to business: The rule is an attempt to clarify the existing statute. It is not intended to impose additional burdens or costs and it is not believed that any specific provisions do impose additional costs. Any costs that may be incurred are associated with the underlying statute.

One carrier indicated that the rule would cause a change in benefits. That is not correct - the benefits are traced to the underlying statute which was passed in 1995. The rule does

not add any benefit. The rule is not adding a new burden. It is clarifying an existing requirement that some carriers may not be fully complying with.

Carriers did ask for some measures that could possibly be mitigatory. They are addressed later in this report. They include a delayed effective date and some suggested text additions or clarifications.

What will be the compliance costs for the industries affected? The rule was designed to clarify the existing statute. Any substantive costs are associated with the statute, not the rule. However, there may be some costs inherent in the rule making. These costs would include the costs in reading and comprehending any rule and any costs in changing existing contracts or documents. It should be noted that if existing contracts or documents are not in compliance with the underlying statute, these costs are attributable to that statute not the rule.

There were some concerns mentioned about the scope of some of the language. Carriers asked for additional language to clarify or narrow the proposed text to preclude some possible costs. This is addressed in greater detail later in this report.

One carrier suggested that there would be no additional costs attributable to the rule if their mitigation suggestions are utilized (one of their suggested changes was made).

Another carrier indicated that there would be costs associated with implementing the rule and changing their documents and contracts. They stated that these costs would be greatly reduced if the effective date of the rules was delayed until January 2000. This would allow the stock of existing documents to be used and enable the carrier to include these changes in with all other provider contract changes in their annual provider contract renewal. This is addressed later in this report.

What percentage of the industries in the four-digit standard industrial classification will be affected by the rule? The proposed rule would affect 100% of the health carriers that offer health plans subject to regulation by the insurance commissioner.

Will the rule impose a disproportionately higher economic burden on small businesses within the four-digit classification? No. The proposed rule will not impose a disproportionately higher economic burden on smaller carriers. All carriers are currently required to comply with the existing statute. The rules are an attempt to clarify what the carriers must do to comply. The rules should not be an economic burden for any carrier.

Can mitigation be used to reduce the economic impact of the rule on small businesses and still meet the stated objective of the statutes that are the basis of the proposed rule? Yes. The commissioner designed the rule to clarify and narrow the existing statutory requirements. The commissioner solicited mitigation suggestions that would meet the objectives in a more cost-efficient manner.

WAC 284-43-205(1): The suggestion that was made was to include the phrase "and is acting within the scope of practice" between "condition," and "unless," - this suggestion was intended to clarify the subsection and possibly to mitigate costs.

The commissioner and the rule drafter intend to continue to work with all parties to mitigate possible costs while still accomplishing the goals of the rule making.

What steps will the commissioner take to reduce the costs of the rule on small businesses? The commissioner does not believe that the rule will incur significant costs on small businesses or larger businesses. The commissioner and the rule writer will continue to work with affected carriers and interested parties in mitigating costs when that is possible while still accomplishing the goals of the rule making.

Which mitigation techniques have been considered and incorporated into the proposed rule? See above.

Which mitigation techniques were considered for incorporation into the proposed rule but were rejected, and why? Several suggested changes may help clarify the rule or mitigate the costs. The commissioner has chosen not to make all of the suggested changes at this time. Many of the suggestions are intriguing and the commissioner has not rejected the possibility of making of any of the proposed changes. They will be considered and discussed throughout the remainder of the rule-making process.

Effective Date: It was suggested that the effective date be delayed until December of 1999 or January of 2000. The deferred date would eliminate some administrative burdens and costs upon carriers. This would allow carriers to process these network changes at the same time they are renewing contracts with providers. The commissioner has not made a final decision on this issue and will continue to consider delaying the effective date of the rules. It should be noted however that the underlying statute was effective January 1, 1996. These rules are intended to simply clarify a current statutory requirement. Any costs associated with the requirements of the statute should have been borne by now. At the present time, the effective date clause was removed and the rules would be effective thirty-one days after adoption. The commissioner and the rule drafter will continue to discuss this issue with the carriers.

Text Changes: Suggested text changes include the following:

One suggestion was to insert the phrase in subsection (2) "*submitted or possessed by either health carrier or provider*" between "*evidence*" and "*of the type*."

Another text suggestion for subsection (2) was to include the phrase "*or any of the other standards contemplated by RCW 48.43.045 (1)(b)*." after "*clinical efficiency*."

Another carrier indicated that they interpreted the rule to say that carriers could only exclude services if they could prove the services were not cost-effective or clinically efficacious. They believed this to be potentially very costly. It was suggested that subsection (2) should be deleted or rewritten to allow carriers to exclude services that have not been demonstrated to be:

(1) Clinically efficacious through generally accepted scientific methods; or

(2) Cost-effective through customary methods used to determine cost-effectiveness.

The commissioner is not convinced that the suggested changes add clarity or mitigate costs. The commissioner and the rule drafter will continue to study these proposals and

work with the carriers who made these suggestions to determine if these changes are truly advantageous. These changes or variants may be incorporated at a later date.

The rule drafter will continue to work with all parties, including carriers of all sizes, throughout the rule-making period. If any further mitigation techniques are proposed that do not undermine the goals of the rule, they will be considered.

Briefly describe the reporting, recordkeeping, and other compliance requirements of the proposed rule: There are no new reporting or record-keeping requirements as a result of this rule.

List the kinds of professional services that a small business is likely to need in order to comply with the reporting, recordkeeping, and other compliance requirements of the proposed rule: There are no new reporting or record-keeping requirements in these rules. It is expected that no new professional services will be needed by smaller carriers.

Cost of Equipment: There is no anticipated additional cost of equipment.

Cost of Supplies: There is no anticipated additional cost of supplies.

Cost of Labor: There should be no more than minimal labor costs associated with evaluating contracts for possible changes. If changes are necessary to the carrier's network or documents, the changes may incur some costs.

Cost of Increased Administration: There may be some minimal costs associated with reading and comprehending the new rule. The commissioner may be able to offer technical assistance to carriers in this regard.

Compare the cost of compliance for small business with the cost of compliance for the largest business in the same four-digit classification: The cost of compliance should be proportional for small businesses. There should be no proportional differences in costs of equipment, supplies, labor, or administration. Smaller carriers have fewer plans, smaller provider network, fewer materials, and fewer internal and external rules and regulations to track. Compliance should require less employee time and lower per-employee costs for smaller carriers. Larger carriers with more plans and larger networks may have slightly higher proportional per-employee costs to comply with this rule.

Have businesses that will be affected been asked what the economic impact will be? All parties were informed of the commissioner's intent to revisit this subject and to draft rules regarding provider contracting on October 29, 1998. The proposal was published in the Washington State Register and a response form was posted on the insurance commissioner's website. Interested parties and carriers, including smaller carriers, were mailed the CR-101 on November 12, 1998. The CR-101 requested comments and gave agency contact numbers for parties interested in participating in the rule-making process.

Additionally, a cross-section of carriers were sent a questionnaire and draft rules and asked about possible economic impacts. Suggestions for mitigation were also solicited at that time.

PROPOSED

How did the commissioner involve small business in the development of the proposed rule? See above.

How and when were affected small businesses advised of the proposed rule? The CR-101 was filed on October 29, 1999 [1998]. The proposal was published in the Washington State Register and was posted on the Insurance Commissioner's website. The website includes a form for carriers and other interested parties to comment on any rule proposal at any stage in the process. Interested parties and carriers, including smaller carriers, were mailed the CR-101 on November 12, 1998. The CR-101 requested comments and gave agency contact numbers for parties interested in participating in the rule-making process.

A copy of the statement may be obtained by writing to Kacy Bradeberry, P.O. Box 40255, Olympia, WA 98504-0255, phone (360) 664-3784, fax (360) 664-2782.

RCW 34.05.328 applies to this rule adoption.

Hearing Location: Seattle Center, Fidalgo Room (part of NW Rooms), Seattle, Washington, on June 29, 1999, at 6:00 p.m.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by June 28, 1999, TDD (360) 407-0409.

Submit Written Comments to: Kacy Bradeberry, P.O. Box 40255, Olympia, WA 98504-0255, Internet e-mail KacyB@oic.wa.gov, fax (360) 664-2782 by June 29, 1999.

Date of Intended Adoption: July 13, 1999.

May 19, 1999

Robert A. Harkins
Chief Deputy Commissioner

NEW SECTION

WAC 284-43-205 Every category of health care providers. (1) To effectuate the requirement of RCW 48.43.045 that health plans provide coverage for treatments and services by every category of provider, networks maintained by health carriers for health plans shall not exclude any category of providers licensed by the state of Washington who provide health care services or care within the scope of their practice for conditions covered by basic health plan (BHP) services as defined by RCW 48.43.005(4). If the BHP covers the condition, the carrier may not exclude a category of provider who is licensed to provide services for that condition, and is acting within the scope of practice, unless such services would not meet the carrier's standards pursuant to RCW 48.43.045 (1)(b). For example, if the BHP provides coverage for outpatient treatment of lower back pain, any category of provider that provides cost-effective and clinically efficacious outpatient treatment for lower back pain within its scope practice and otherwise abides by standards pursuant to RCW 48.43.045 (1)(b) may not be excluded from the network.

(2) RCW 48.43.045 (1)(b) permits health carriers to require providers to abide by certain standards. These standards may not be used in a manner designed to exclude categories of providers unreasonably. For example, health carriers may not decide that a particular category of provider can never render any cost-effective or clinically efficacious services and thereby exclude that category of provider completely from health plans on that basis. However, health car-

riers may determine that particular services for particular conditions by particular categories of providers are not cost-effective or clinically efficacious, and may exclude such services from coverage or reimbursement under a health plan. Any such determinations must be supported by relevant information or evidence of the type usually considered and relied upon in making determinations of cost-effectiveness or clinical efficacy.

(3) Health plans are not prohibited by this section from placing reasonable limits on individual services rendered by specific categories of providers. However, health plans may not contain unreasonable limits, and may not include limits on the type of provider permitted to render the covered service unless such limits comply with RCW 48.43.045 (1)(b).

(4) This section does not prohibit health plans from using restricted networks. Health carriers offering plans with restricted networks may select the individual providers in any category of provider with whom they will contract or whom they will reimburse. A health carrier is not required by RCW 48.43.045 or this section to accede to a request by any individual provider for inclusion in any network for any health plan. Health plans that use "gatekeepers" for access to specialist providers may use them for access to specified categories of providers.

(5) Health carriers may not offer coverage for health services for certain categories of providers solely as a separately priced optional benefit.

(6) The insurance commissioner may grant reasonable temporary extensions of time for implementation of RCW 48.43.045 or this section, or any part thereof, for good cause shown.

WSR 99-11-103 PROPOSED RULES INSURANCE COMMISSIONER'S OFFICE

[Insurance Commissioner Matter No. R 97-8—Filed May 19, 1999, 11:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 98-01-117.

Title of Rule: Standards for coverage of chemical dependency.

Purpose: The rule was identified in the commissioner's regulatory improvement process as one that was out of date and should be reviewed and updated.

Other Identifying Information: Insurance Commissioner Matter No. R 97-8.

Statutory Authority for Adoption: RCW 48.02.060, 48.44.050, and 48.46.200.

Statute Being Implemented: RCW 48.21.180, 48.44.240, 48.46.350.

Summary: This rule making would update the chemical dependency rule.

Reasons Supporting Proposal: References in the existing rule are outdated, benefit minimums established in 1987 have become ceilings and are no longer adequate to pay for increasingly effective but expensive treatment.

Name of Agency Personnel Responsible for Drafting: Don Sloma, P.O. Box 40255, Olympia, WA, (360) 586-5597; Implementation and Enforcement: Bethany Weidner, P.O. Box 40255, Olympia, WA, (360) 664-8137.

Name of Proponent: Deborah Senn, Insurance Commissioner, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: The chemical dependency rule was among those rules identified in the commissioner's regulatory improvement process as a rule that needed to be updated. The original rule was adopted in 1987 and has never been amended. References to WAC and RCW sections are outdated. Benefit provisions are no longer adequate. Since 1987, the treatment of chemical dependency has become increasingly effective but has also become increasingly expensive due to medical inflation. Provisions that were intended as floors in 1987 become ceilings and are no longer adequate to provide effective, comprehensive treatment to policyholders. This rule making will update the regulatory scheme.

Proposal Changes the Following Existing Rules: WAC 284-53-005 is created.

Existing WAC 284-53-010 is amended under the proposal:

Proposed subsection (1) is new. It would require coverage of medically necessary detoxification as an emergency medical condition. In addition, it would require that payments for medically necessary detoxification services not be counted as part of the minimum benefits required under the rule.

Proposed subsection (2) deletes a considerable amount of existing text in old subsection (1).

Proposed subsection (4)(a) deletes some existing text (old subsection (3)). It raises the minimum benefit from \$5,000 to \$10,000. Subsection (4)(b) ties future adjustments to the change in the medical care component of the consumer price index in the Seattle standard metropolitan statistical area as compiled by the Bureau of Labor. The lifetime limit on chemical dependency coverage is removed.

Proposed subsection (5) deletes some existing text. Subsection [(5)](d) excepts medically necessary detoxification from prenotification standards.

There are numerous other changes also, mainly changes in language and references to increase clarity and bring the rule up to date.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

Background: In 1987, the legislature noted in RCW 48.21.160 that "chemical dependency is a disease and, as such, warrants the same attention from the health care industry as other similarly serious diseases warrant." The legislature went on to state that many citizens of Washington were "effectively precluded from obtaining adequate coverage for medical assistance under the terms of their health insurance contract of health care service contract."

Later in 1987, the insurance commissioner adopted WAC 284-53-010 to effectuate the legislation passed earlier that year.

The 1987 rule adopted minimum benefits of \$5,000 in any consecutive twenty-four month period and a lifetime maximum benefit of not less than \$10,000. The rule has not been amended since 1987. The floors established in 1987 have become de facto ceilings. A random survey of health plans conducted by staff of the Office of the Insurance Commissioner indicated that no plan had standard benefits that exceeded the 1987 minimums.

In the past twelve years, treatment of chemical dependency has become increasingly effective but has also become increasingly expensive due to medical inflation. The cost of effective, comprehensive treatment can exceed the minimum benefit over twenty-four months and approach the "lifetime" benefit.

In 1998, the commissioner decided to review this subject. In response to consumer complaints and the concerns of addiction treatment specialists and providers, the commissioner established a work group to focus on the issue of chemical dependency.

The work group was composed of consumers, insurers, addiction treatment providers, and representatives of state agencies. The work group met four times over the course of several months. It reviewed the existing rule and discussed the current state of chemical dependency treatment. One resource that was utilized was the standards established by the American Society of Addiction Medicine (ASAM). These criteria were developed and refined over the course of several years and have been adopted as the standard of care by eighteen states and the Department of Defense. In addition, the ASAM standards are a condition for certification to offer chemical dependency treatment in Washington according to rules adopted by the Washington State Department of Social and Health Services.

The work group suggested necessary and desired amendments to the rule and alternatives. The recommendation of the work group was submitted to the commissioner for her consideration. The draft rule submitted by the work group was the basis for the proposed rule.

Is the rule required by federal law or federal regulation? This rule is not required by federal law or regulation.

What industry is affected by the proposed rule? The industry code that would be affected by the proposed rules includes hospital and medical service plans, industry code # 6324. In Washington, such plans are called health care service contractors (HCSCs) and health maintenance organizations (HMOs). It will also apply to group and blanket disability carriers, unless exempted by RCW 48.21.190, which fall under the classification of accident and health insurance companies, industry code # 6321.

List the specific parts of the proposed rule, based on the underlying statutory authority (RCW section), which may impose a cost to business: Many of the changes to the language are substantive. Many more changes update and clarify language as a part of the commissioner's on-going regulatory improvement program.

PROPOSED

The following provisions may impose a cost to businesses:

Proposed WAC 284-53-005 adds a definition of "medically necessary" or "medical necessity" which was developed by the American Society of Addiction Medicine.

Proposed WAC 284-53-010(1) would require coverage of medically necessary detoxification as an emergency medical condition. In addition, it would require that payments for medically necessary detoxification services not be counted as part of the minimum benefits required under the rule.

Proposed WAC 284-53-010 (4)(a) raises the minimum benefit from \$5,000 to \$10,000. Subsection [(4)](b) ties future adjustments to the change in the medical care component of the consumer price index in the Seattle standard metropolitan statistical area as compiled by the Bureau of Labor.

The lifetime limit on chemical dependency coverage is removed.

Proposed WAC 284-53-010(5) excepts medically necessary detoxification from prenotification standards.

What will be the compliance costs for the industries affected? There will be initial costs associated with raising the minimum benefit standards from \$5,000 to \$10,000 and removing the lifetime cap. Additionally, the rule would extend coverage in some cases by including coverage of medically necessary detoxification.

However, it should be noted that the initial minimum standards were established in 1987. In the twelve years that have passed, medical inflation has risen well over 100%. The "lifetime" cap of 1987 of \$10,000 does not have the same relative value in 1999 as the minimum standard of \$5,000 did in 1987. The benefit has become almost illusory. Adjusting the minimum benefit to \$10,000 is intended to restore the benefit that originally existed in rule.

Removal of the "lifetime" cap reflects the efficacy and importance of chemical dependency treatment. Addiction treatment has outcomes that are comparable in efficacy to the treatment of other chronic conditions. Compliance rates for patients are higher for chemical dependency patients than for patients with diabetes, hypertension, and asthma, amongst other conditions. Thus, treatment can be extremely effective and patients are generally more apt to stay with the treatment than many other chronic conditions.¹

While initial treatment costs may rise for carriers, they will enjoy considerable cost-offsetting. Carriers may spend/pay less money on health coverage overall by providing the necessary chemical dependency coverage. Studies show that a mere 5% to 10% of the medical costs of a chemically dependent person are related to addiction treatment.² While chemical dependency users and their families are among the highest users of medical care, the cost of chemical dependency treatment is comparatively very low. The families of a drug or alcoholic dependent person use two to three times more health care services than a family without a chemically dependent person.³ The children of alcoholics incur medical costs 32% greater than other children.⁴ The health costs drop dramatically after treatment. It is important not only medically to adequately treat the chemically dependent person, it is important in terms of medical costs as well. The drug abuse treatment outcome study by the Center for Substance Abuse Treatment indicates that patients who receive

long-term residential treatment (over ninety days) are almost twice as likely to remain free of drug use.⁵

An Aetna study of federal employees showed that chemically dependent enrollees and their families incurred costs of \$398 per month immediately prior to substance abuse treatment. It dropped to \$252 per month for the year after treatment and fell further to \$192 per month.⁶ A 1997 Washington state study found that the hospital costs of treated (defined as receiving at least thirty days of chemical dependency treatment) clients had an average of \$4,500 less in Medicaid medical costs (\$3,500 in inpatient expenses, \$1,000 in outpatient expenses) than the average untreated client for the five-year follow-up period.⁷ Studies by the state of California show that the longer the duration of treatment, the greater the cost-savings. They reported a reduction in hospitalizations of roughly one third after treatment.⁸

A study by Kaiser Permanente noted that after off-setting the reductions in the patient's medical service costs, the overall cost of treatment was a mere \$136 per year per patient.⁹ This decline in the patient's health costs off-sets the great bulk of the costs of treatment and does not factor in the decline in health care costs of the family of the chemically dependent person.

It should be noted that the current rules include coverage of a limited amount of the possible costs of treatment. If coverage is unavailable or inadequate, the condition may not be treated or may be treated unsuccessfully. Unsuccessful treatment due to inadequate coverage reaps none of the cost savings and will incur considerably greater costs than the additional coverage amounts.

The net result will be at least a considerable cost-offset. There may be a complete cost-offset when the reduction in health costs of the chemically dependent person's family is included. Possibly, there could even be a net gain in terms of health costs once all savings are calculated.

What percentage of the industries in the four-digit standard industrial classification will be affected by the rule? The proposed rule would affect 100% of the health carriers that offer health plans subject to regulation by the insurance commissioner. It would also affect 100% of the group disability carriers that are not exempted by RCW 48.21.160.

Will the rule impose a disproportionately higher economic burden on small businesses within the four-digit classification? No. The proposed rule will not impose a disproportionately higher economic burden on smaller carriers.

Can mitigation be used to reduce the economic impact of the rule on small businesses and still meet the stated objective of the statutes that are the basis of the proposed rule? Yes. The effective date of the rule will be delayed until January 1, 2000, and the rule will only apply to contracts issued or renewed after that date.

No other mitigation techniques were proposed that achieved the goals of this rule making.

The rule drafter will continue to work with all parties, including carriers of all sizes, throughout the rule making period. If mitigation techniques are proposed that do not undermine the goals of the rule, they will be considered.

What steps will the commissioner take to reduce the costs of the rule on small businesses? See above.

Which mitigation techniques have been considered and incorporated into the proposed rule? The effective date of the rule will be delayed until January 1, 2000, and the rule will only apply to contracts issued or renewed after that date.

Which mitigation techniques were considered for incorporation into the proposed rule but were rejected, and why? No other mitigation techniques were proposed that achieved the goals of this rule making. A suggestion was made to exempt group plans from the amended requirements of the rule. That suggestion was not incorporated at this time. The importance and the efficacy of chemical dependency treatment to enrollees is undercut by exempting groups. Currently, the minimum standards are rarely exceeded by groups despite the fact that they are inadequate. There is no reason to believe that groups would adjust their standards in the future.

The rule drafter will continue to work with all parties, including carriers of all sizes. If mitigation techniques are proposed that do not undermine the goals of the rule, they will be considered.

Briefly describe the reporting, recordkeeping, and other compliance requirements of the proposed rule. There are no new reporting or record-keeping requirements. Carriers would have to change new contracts or reissued contracts after the effective date of January 1, 2000.

List the kinds of professional services that a small business is likely to need in order to comply with the reporting, recordkeeping, and other compliance requirements of the proposed rule: There are no new reporting or record-keeping requirements in this rule. It is expected that no new professional services will be needed by smaller carriers.

Cost of Equipment: There is no anticipated additional cost of equipment.

Cost of Supplies: There is no anticipated additional cost of equipment.

Cost of Labor: There should be no more than minimal labor costs associate with reconciling new and reissued filings to the requirements of the rule.

Cost of Increased Administration: There will be some negligible costs in reading and comprehending the new requirements. There may be some minimal costs associated with calculating the minimum benefit by determining the changes in the medical care component of the consumer price index. The commissioner may be able to offer technical assistance to carriers in this regard.

Compare the cost of compliance for small business with the cost of compliance for the largest business in the same four-digit classification, using one or more of the following: The cost of compliance should be proportional for small businesses. There should be no significant proportional differences in costs of equipment, supplies, labor, or administration. The benefits are exactly the same for all plans and any additional compliance costs should be proportional to the size of the carrier. Larger carriers may face slightly higher per-employee costs due to the added complex-

ity of monitoring more plans, more contracts, and more materials.

Have businesses that will be affected been asked what the economic impact will be? All parties were informed of the commissioner's intent to revisit this subject and to draft rules regarding provider contracting on December 18, 1997. The proposal was published in the Washington State Register and was posted on the insurance commissioner's website. Interested parties and carriers, including smaller carriers, were mailed the CR-101 on December 22, 1997. The CR-101 requested comments and gave agency contact numbers for parties interested in participating in the rule-making process.

A work group of interested parties was established. The group was open to all interested participants. Members included consumers, representatives of carriers, providers of chemical dependency services, and representatives from other state agencies.

How did the commissioner involve small business in the development of the proposed rule? See above.

How and when were affected small businesses advised of the proposed rule? The CR-101 was filed on December 18, 1997. The proposal was published in the Washington State Register and was posted on the insurance commissioner's website. Interested parties and carriers, including smaller carriers, were mailed the CR-101 on December 22, 1997. The CR-101 requested comments and gave agency contact numbers for parties interested in participating in the rule-making process.

- 1 O'Brien and McLellan, "Myths About the Treatment of Addiction," The Lancet, January 27, 1996, Vol. 347, pages 237-240.
- 2 Langenbucher, J.W., McCrady B.S., and Esterly, R. Socioeconomic Evaluations of Addictions Treatment: Prepared for the President's Commission on Model State Drug Laws. Piscataway, N.J. Rutgers University, 1993.
- 3 Langenbucher, J.W., McCrady B.S., and Esterly, R. Socioeconomic Evaluations of Addictions Treatment: Prepared for the President's Commission on Model State Drug Laws. Piscataway, N.J. Rutgers University, 1993.
- 4 Children of Alcoholics Foundation, Inc. Children of Alcoholics in the Medical System: Hidden Problems, Hidden Costs. 1990.
- 5 U.S. Dept. of Health and Human Services, Substance Abuse and Mental Health Services, Center for Substance Abuse Treatment, A Guide to Substance Abuse Services for Primary Care Physicians, 1997, page 57.
- 6 National Institute on Alcohol Abuse and Alcoholism. Alcoholism treatment impact on total health care utilization and costs: Analysis of the federal employee health benefit program with Aetna Life Insurance Company. Rockville, MD. U.S. Dept. of Health and Human Services, 1985.
- 7 Luchansky, B., Longhi D. Cost Savings in Medicaid Medical Expenses: An Outcome of Publicly Funded Chemical Dependency Treatment in Washington State. Washington State Department of Social and Health Services, 1997.
- 8 Gerstein DR, Johnson RA, Harwood, et al. Evaluating Recovery Services: The California Drug and Alcohol Treatment Assessment (CALDATA) Report, Department of Alcohol and Drug Programs, Sacramento, CA, 1994.
- 9 Moore, Charles, Costs and benefits of Chemical Dependency Treatment at Kaiser Permanente, Sacramento Chemical Dependency Recovery Program, 1997.

A copy of the statement may be obtained by writing to Kacy Brandedberry, P.O. Box 40255, Olympia, WA 98504-0255, phone (360) 66-3784 [664-3784], fax (360) 664-2782.

RCW 34.05.328 applies to this rule adoption. This is a significant legislative rule.

Hearing Location: 14th and Water, Cherberg Building, Senate Hearing Room 2, Olympia, Washington, on July 1, 1999, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by June 30, 1999, TDD (360) 407-0409.

Submit Written Comments to: Kacy Brandeberry, P.O. Box 40255, Olympia, WA 98504-0255, Internet e-mail KacyB@oic.wa.gov, fax (360) 664-2782, by June 30, 1999.

Date of Intended Adoption: July 15, 1999.

May 19, 1999

Robert A. Harkins

Chief Deputy Commissioner

PROPOSED NEW SECTION

WAC 284-53-005 Definitions. (1) "Chronic illnesses" include, but are not limited to, heart disease, diabetes, chronic obstructive pulmonary disease, and chemical dependency.

(2) "Medically necessary" or "medical necessity," with respect to chemical dependency coverage, means indicated in the *Patient Placement Criteria for the Treatment of Substance Abuse-Related Disorders II* as published in 1996 by the American Society of Addiction Medicine.

(3) Other terms used in this chapter, but not specifically defined here, shall have the meanings given in WAC 284-43-130 or, if not defined there, in WAC 284-50-030.

AMENDATORY SECTION (Amending Order R 87-10, filed 8/31/87, effective 1/1/88)

WAC 284-53-010 Standards for coverage of chemical dependency. Contractual provisions in any policy issued or renewed on or after January 1, 2000, for chemical dependency required by RCW 48.21.180, 48.44.240, or 48.46.350 shall meet the following standards and administrative requirements.

(1) Medically necessary detoxification must be covered as an emergency medical condition according to RCW 48.43.093, and so long as a patient is not yet enrolled in other chemical dependency treatment, detoxification may not be included when calculating payments within the chemical dependency payment minimum required in this chapter.

(2) The coverage for chemical dependency shall provide payment ((toward)) for reasonable charges for any medically necessary treatment and supporting services provided to ((covered individuals)) an enrollee by an "approved treatment ((facility)) program" approved ((pursuant to)) under RCW 70.96A.020((2) or 69.54.030, which may include medical evaluations, psychiatric evaluations, room and board (inpatient only), psychotherapy (individual and group), counseling (individual and group), behavior therapy, recreation therapy, family therapy (individual and group) for the patient and covered persons, prescription drugs prescribed by an approved treatment facility, and supplies prescribed by an approved treatment facility. The coverage shall provide such payment whether the treatment or services are provided on an inpatient (resident) or an outpatient (nonresident) basis, except to the extent that inpatient or outpatient coverage is

not provided to the individual insured for other common illnesses or disease. Inpatient coverage shall include detoxification if detoxification is not specifically included in other contract coverage)) (3). In addition, medically necessary detoxification services may also be provided in hospitals licensed according to chapter 70.41 RCW.

((2)) (3) Except to the extent prohibited by this ((section)) chapter, the chemical dependency coverage may be limited by provisions of the contract that are applicable to other benefits or services for other ((common)) chronic illnesses or disease generally including, but not limited to, provisions relating to ((deductibles, coinsurance and copayments)) enrollee point of service cost sharing. However, coverage shall not be denied by reason of contract provisions which are not pertinent to the treatment of chemical dependency, such as provisions requiring a treatment ((facility)) program to have surgical facilities or approval by the joint commission on accreditation of hospitals, that there be a physician in attendance, or that the exact date of onset be known.

((3)) (4)(a) The minimum benefits for chemical dependency treatment((,)) and supporting services ((and detoxification)) shall be ((an amount which is the lesser of five)) no less than ten thousand dollars, exclusive of ((deductibles, coinsurance and copayments,)) all enrollee point of service cost sharing amounts in any consecutive twenty-four-month period ((or an amount equal to the benefit limit in the contract applicable to the individual insured which would normally be applied to treatment of any common major illness or disease other than chemical dependency. The benefits may be limited to a lifetime maximum of not less than ten thousand dollars exclusive of deductibles, coinsurance and copayments, notwithstanding WAC 284-44-040(2). For purposes of determining the limitations allowed by this subsection, with regard to all benefits except the lifetime maximum a carrier may take credit for any benefits paid by any carrier on behalf of a covered individual for chemical dependency treatment and supporting services received in an immediately preceding twenty-four month period. For purposes of determining the lifetime maximum allowed by this subsection, calculation must be made on either a per contract or per carrier basis except that when one group contract holder has utilized one or more carriers or plans then a carrier may take credit for amounts paid on behalf of a covered individual from January 1, 1987, onward under all past and current carriers and plans with respect to that group contract holder)).

((4)) (b) The minimum benefit specified in this subsection must be adjusted by a carrier in any of its contracts for which a new or revised form is filed with the commissioner. The adjustment must correspond with the change in the medical care component of the consumer price index for all urban consumers for the *Seattle Standard Metropolitan Statistical Area* compiled by the Bureau of Labor statistics, United States Department of Labor. The base year for the computation shall be 1999.

(5) Contract provisions subject to this rule:

(a) Shall not impose waiting periods or preexisting condition limitations on chemical dependency coverage, except that a carrier may impose ((a waiting period of)) no longer than a three month preexisting condition limitation for chemical dependency treatment and supporting services to the

extent that a ((waiting period or)) preexisting condition limitation is imposed for other ((common)) chronic illnesses ((or disease)).

(b) ((Should not provide for the application of comparative statistical measures which are lacking in statistical reliability. Because of the limited number of approved treatment facilities in this state and the diversity of methodologies and fee structures, a measure based on the application of usual, customary and reasonable charges for overall chemical dependency treatment and supporting services is not currently acceptable but comparison of costs for specific components of such treatment and supporting services may be acceptable.))

(e)) Shall not deny reasonable benefits for actual treatment and services rendered solely because a course of treatment was interrupted or was not completed.

((d)) (c) May limit coverage to specific facilities but only if the carrier provides ((one or more reasonably available and conveniently located)) or contracts for the provision of approved treatment ((facilities)) programs under RCW 70.96A.020((2 or 69.54.030)) which alone or in combination offer both inpatient and outpatient care and which comply with network adequacy requirements established in WAC 284-43-200. This right to limit coverage to specific facilities ((will)) permits a carrier to limit diagnosis and treatment to that rendered by itself or by a facility to which it makes referrals, but, in either case, only if the facility is or part of an approved treatment ((facility)) program under RCW 70.96A.020((2 or 69.54.030)).

((e)) (d) Except in the case of detoxification services, may require prenotification in all reasonable situations; may also require a second opinion if such second opinion is required under the contract generally for other ((common)) chronic illnesses ((and disease)). Prenotification with respect to medically necessary detoxification ((in most cases would)) services is not ((be)) reasonable.

((f)) (6) In situations where an ((insured)) enrollee is under court order to undergo a chemical dependency assessment or treatment, or in situations related to deferral of prosecution, deferral of sentencing or suspended sentencing, or in situations pertaining to motor vehicle driving rights and the Washington state department of licensing, the carrier may require the ((insured)) enrollee to furnish at the ((patient's)) enrollee's expense no less than ten and no more than thirty working days before treatment is to begin, an initial assessment of the need for chemical dependency treatment and a treatment plan, made by an individual of the ((patient's)) enrollee's choice who is a ((qualified alcoholism and/or drug treatment)) chemical dependency counselor as defined in chapter 440-22 WAC employed by an approved treatment ((facility)) program under RCW 70.96A.020((2 or 69.54.030)) or licensed under chapter 18.57 or 18.71 RCW to enable the carrier to make its own evaluation of medical necessity prior to scheduled treatment. Nothing in this chapter may be construed to require a carrier to pay for court ordered chemical dependency treatment that is not medically necessary, nor may anything in this chapter be construed to relieve a carrier from its obligations to pay for court ordered chemical dependency treatment that is medically necessary.

((e)) (7) Except as determined to be medically necessary or otherwise specifically provided in this ((section))

chapter, contractual provisions subject to this section and the administration of such provisions shall not use definitions, predetermination procedures or other prior approval requirements, or other provisions, requirements or procedures, which ((unreasonably)) restrict access to treatment, continuity of care or payment of claims.

WSR 99-11-104

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed May 19, 1999, 11:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 99-07-133.

Title of Rule: Chapter 458-57 WAC, State of Washington Estate and Transfer Tax Reform Act.

Purpose: To explain the application of Washington's estate tax program.

Statutory Authority for Adoption: RCW 83.100.200.

Statute Being Implemented: Chapter 83.100 RCW.

Summary: The Internal Revenue Service administers the federal regulations concerning the federal estate tax. Washington's estate tax program coordinates with and generally complements the federal program. Washington's estate tax liability is limited to the credit provided in the federal statutes for estate tax liabilities imposed by the states. The proposed rules for chapter 458-57 WAC explain the provisions of Washington's estate tax program and provide examples to help explain how these provisions apply.

Reasons Supporting Proposal: To incorporate provisions of chapter 64, Laws of 1988, and chapter 149, Laws of 1996, and chapter 145, Laws of 1997.

Name of Agency Personnel Responsible for Drafting: Pat Moses, 711 Capitol Way South, Suite #303, Olympia, WA, (360) 902-7111; Implementation: Claire Hesselholt, 711 Capitol Way South, Suite #303, Olympia, WA, (360) 753-3446; and Enforcement: Gary O'Neil, 2735 Harrison N.W., Building 4, Olympia, WA, (360) 753-2871.

Name of Proponent: Department of Revenue, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: The department proposes replacing the existing seventeen rules in chapter 458-57 WAC with five new rules. The new rules will provide the information in a more clear, concise, and logical manner. The information currently provided in chapter 458-57 WAC will be updated. The new rules will incorporate provisions of chapter 149, Laws of 1996 and chapter 145, Laws of 1997, which changed the interest rates and interest calculations that apply to the estate tax program.

The resulting rules will help ensure equitable treatment through consistent application of the underlying statutes.

Proposing the adoption of the following new rules in chapter 458-57 WAC:

WAC 458-57-005	Nature of estate tax, definitions.
WAC 458-57-015	Valuation of property, property subject to estate tax, how to calculate the tax.
WAC 458-57-025	Determining the tax liability of nonresidents.
WAC 458-57-035	Washington estate tax return to be filed—Penalty for late filing—Interest on late payments—Waiver or cancellation of penalty—Application of payment.
WAC 458-57-045	Administration of the tax—Releases, amended returns, refunds, heirs of escheat estates.

Proposing the repeal of the following rules in chapter 458-57 WAC:

WAC 458-57-510	Scope of rules.
WAC 458-57-520	Nature of estate tax.
WAC 458-57-530	Property subject to estate tax.
WAC 458-57-540	Residents—Tax imposed.
WAC 458-57-550	Valuation.
WAC 458-57-560	Imposition of tax.
WAC 458-57-570	Tax returns to be filed.
WAC 458-57-575	Waiver or cancellation of penalties.
WAC 458-57-580	Formula.
WAC 458-57-590	Property "located in" Washington.
WAC 458-57-600	Reciprocity exemption.
WAC 458-57-610	Releases.
WAC 458-57-620	Amended returns—Final determination.
WAC 458-57-630	Administration—Rules.
WAC 458-57-640	Escheat estates—Heirs—How located and proof.
WAC 458-57-650	Interest and penalties.
WAC 458-57-660	Refunds.

Proposal Changes the Following Existing Rules: This rule proposes to repeal seventeen existing rules in favor of five new and more comprehensive rules. The seventeen rules being repealed are identified above.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required because the rule and the proposed amendments do not impose any requirements or burdens upon small businesses that are not already specifically required by statute.

RCW 34.05.328 does not apply to this rule adoption. This rule is an interpretive rule as defined in RCW 34.05.328 (5)(c)(ii).

Hearing Location: Evergreen Plaza Building, 711 Capitol Way, 2nd Floor Conference Room, Olympia, WA, on June 23, 1999, at 10:00 a.m.

Assistance for Persons with Disabilities: Contact Ginny Dale no later than ten days before the hearing date, TDD 1-800-451-7985, or (360) 586-0721.

Submit Written Comments to: Pat Moses, Department of Revenue, P.O. Box 47467, Olympia, WA 98504-7467, fax (360) 664-0693, e-mail patm@dor.wa.gov, by June 23, 1999.

Date of Intended Adoption: June 30, 1999.

May 19, 1999

Russell W. Brubaker

Assistant Director

Legislative and Policy Division

NEW SECTION

WAC 458-57-005 Nature of estate tax, definitions. (1)

Introduction. This rule describes the nature of Washington state's estate tax as it is imposed by chapter 83.100 RCW (Estate and Transfer Tax Act). It also defines terms that will be used throughout chapter 458-57 WAC (Washington Estate and Transfer Tax Reform Act Rules).

(2) **Nature of Washington's estate tax.** The estate tax is neither a property tax nor an inheritance tax. It is a tax imposed on the transfer of the entire taxable estate and not upon any particular legacy, devise, or distributive share. Washington's estate tax is structured so that if an estate does not exceed the unified credit allowed by the Internal Revenue Service (IRS), it will not owe any estate tax to the state of Washington. The state tax effectively shifts a portion of the federal estate tax obligation to the state. Details of the federal estate tax can be found in part 20, subchapter B, chapter I, title 26, Code of Federal Regulations (or chapter 11 of subtitle B of the Internal Revenue Code).

The estate tax does not apply to completed absolute lifetime transfers. Section 2035(d) of the Internal Revenue Code generally exempts such transfers. To the extent permitted by this provision, lifetime transfers are not subject to Washington estate tax. The state of Washington does not have a gift tax.

(3) **Definitions.** The following terms and definitions are applicable throughout chapter 458-57 WAC:

(a) "Decedent" means a deceased individual;

(b) "Department" means the department of revenue, the director of that department, or any employee of the department exercising authority lawfully delegated to him by the director;

(c) "Escheat" of an estate means that whenever any person dies, whether a resident of this state or not, leaving property in an estate subject to the jurisdiction of this state and without being survived by any person entitled to that same property under the laws of this state, such estate property shall be designated escheat property and shall be subject to the provisions of RCW 11.08.140 through 11.08.280.

(d) "Federal credit" means the maximum amount of the credit for state taxes allowed by section 2011 of the Internal Revenue Code. This credit is calculated using an "adjusted taxable estate" figure, which is simply the taxable estate, less sixty thousand dollars. However, when the term "federal credit" is used in reference to a generation-skipping transfer (GST), it means the maximum amount of the credit for state taxes allowed by section 2604 of the Internal Revenue Code;

(e) "Federal return" means any tax return required by chapter 11 (Estate tax) or chapter 13 (Tax on generation-skipping transfers) of the Internal Revenue Code;

(f) "Federal tax" means tax under chapter 11 (Estate tax) of the Internal Revenue Code. However, when used in reference to a GST, "federal tax" means the tax under chapter 13 (Tax on generation skipping transfers) of the Internal Revenue Code;

(g) "Generation-skipping transfer" or "GST" means a "generation-skipping transfer" as defined and used in section 2611 of the Internal Revenue Code;

(h) "Gross estate" means "gross estate" as defined and used in section 2031 of the Internal Revenue Code;

(i) "Internal Revenue Code" or "IRC" means the United States Internal Revenue Code of 1986, as amended or renumbered on January 1, 1995;

(j) "Nonresident" means a decedent who was domiciled outside Washington at the time of death;

(k) "Person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, or other entity and, to the extent permitted by law, any federal, state, or other governmental unit or subdivision or agency, department, or instrumentality thereof;

(l) "Person required to file the federal return" means any person required to file a return required by chapter 11 or 13 of the Internal Revenue Code, such as the personal representative of an estate, a transferor, trustee, or beneficiary of a generation-skipping transfer, or a qualified heir with respect to qualified real property, as defined and used in section 2032A(c) of the Internal Revenue Code;

(m) "Person responsible," means the person responsible for filing the federal and state returns and is the same person described in subsection (l) above;

(n) "Property," when used in reference to an estate tax transfer, means property included in the gross estate. However, when used in reference to a generation-skipping transfer, "property" means all real and personal property subject to the federal tax;

(o) "Resident" means a decedent who was domiciled in Washington at time of death;

(p) "State return" means the Washington Estate Tax Return required by RCW 83.100.050;

(q) "Transfer" means "transfer" as used in section 2001 of the Internal Revenue Code, or a disposition or cessation of qualified use as defined and used in section 2032A of the Internal Revenue Code; and

(r) "Trust" means "trust" under Washington law and any arrangement described in section 2652 of the Internal Revenue Code.

NEW SECTION

WAC 458-57-015 Valuation of property, property subject to estate tax, how to calculate the tax. (1) Introduction. This rule is intended to help taxpayers determine and pay the correct amount of estate tax with their state return. It explains the necessary steps for determining the tax, and provides examples of how the federal estate tax unified credit relates to the amount that must be reported on the state return. (If a nonresident decedent has property located within Washington at the time of death refer to WAC 458-57-025 to determine the amount of tax payable to Washington.)

(2) Valuation. The value of every item of property in a decedent's gross estate is its fair market value. However, the personal representative may elect to use the alternate valuation method under section 2032 of the Internal Revenue Code (IRC), and in that case the value is the fair market value at that date, including the adjustments prescribed in that section of the IRC.

The valuation of certain farm property and closely held business property, properly made for federal estate tax purposes pursuant to an election authorized by section 2032A of the IRC, is binding for state estate tax purposes.

(3) Property subject to estate tax. The estate tax is imposed on transfers of the taxable estate, as defined in section 2051 of the IRC.

(a) The first step in determining the value of the decedent's taxable estate is to determine the total value of the gross estate. The value of the gross estate includes the value of all the decedent's tangible and intangible property at the time of death. In addition, the gross estate may include property in which the decedent did not have an interest at the time of death. A decedent's gross estate for federal estate tax purposes may therefore be different from the same decedent's estate for local probate purposes. Sections 2031 through 2046 of the IRC provide a detailed explanation of how to determine the value of the gross estate. The following are examples of items that may be included in a decedent's gross estate and not in the probate estate:

(i) Certain property transferred by the decedent during the decedent's lifetime without adequate consideration;

(ii) Property held jointly by the decedent and others;

(iii) Property over which the decedent had a general power of appointment;

(iv) Proceeds of certain policies of insurance on the decedent's life annuities; and

(v) Dower and curtesy of a surviving spouse or a statutory estate in lieu thereof.

(b) The value of the taxable estate is determined by subtracting the authorized exemption and deductions from the value of the gross estate. Under various conditions and limitations, deductions are allowable for expenses, indebtedness, taxes, losses, charitable transfers, and transfers to a surviving spouse. Sections 2051 through 2056A of the IRC provide a detailed explanation of how to determine the value of the taxable estate.

(4) Imposition of Washington's estate tax. A tax in an amount equal to the federal credit is imposed by RCW 83.100.030 upon the taxable estate of every decedent. Washington's estate tax is due in every case in which the federal estate tax exceeds the unified credit and there is credit available to be taken, with the exception that all applicable federal estate tax credits are to be applied to the estate's federal tax liability before the state estate tax liability is computed. In no event will an estate pay more than the amount of the credit available to be taken.

(a) The following table is taken from the IRC. It shows the maximum amount of federal credit available for state death taxes. The amount of federal credit computed is also the amount of Washington estate tax due.

(A)—Taxable estate, equal to or more than...	(B)—and, Taxable estate, less than...	(C)—Base credit on amount in column (A)	(D)—Rate of credit on excess over amount in column (A) (AS A PER-CENT)
\$ 0	\$ 40,000	\$ 0	0.0
\$ 40,000	\$ 90,000	\$ 0	0.8
\$ 90,000	\$ 140,000	\$ 400	1.6
\$ 140,000	\$ 240,000	\$ 1,200	2.4
\$ 240,000	\$ 440,000	\$ 3,600	3.2
\$ 440,000	\$ 640,000	\$ 10,000	4.0
\$ 640,000	\$ 840,000	\$ 18,000	4.8
\$ 840,000	\$ 1,040,000	\$ 27,600	5.6
\$ 1,040,000	\$ 1,540,000	\$ 38,800	6.4
\$ 1,540,000	\$ 2,040,000	\$ 70,800	7.2
\$ 2,040,000	\$ 2,540,000	\$ 106,800	8.0
\$ 2,540,000	\$ 3,040,000	\$ 146,800	8.8
\$ 3,040,000	\$ 3,540,000	\$ 190,800	9.6
\$ 3,540,000	\$ 4,040,000	\$ 238,800	10.4
\$ 4,040,000	\$ 5,040,000	\$ 290,800	11.2
\$ 5,040,000	\$ 6,040,000	\$ 402,800	12.0
\$ 6,040,000	\$ 7,040,000	\$ 522,800	12.8
\$ 7,040,000	\$ 8,040,000	\$ 650,800	13.6
\$ 8,040,000	\$ 9,040,000	\$ 786,800	14.4
\$ 9,040,000	\$ 10,040,000	\$ 930,800	15.2
\$ 10,040,000	\$ 1,082,800	16.0

(b) The following are examples of how the estate tax is applied. These examples should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances.

(i) A married woman dies, leaving her husband and children surviving. Her taxable estate, computed after allowance of the marital deduction, is \$700,000. The adjusted taxable estate is \$640,000 (\$700,000 - \$60,000). The Washington state estate tax due is \$18,000 (the base credit shown in column (C) on the first \$640,000).

(ii) A married man dies with all of his property passing to his wife, outright under a community property agreement. His marital deduction under section 2056 of the IRC reduces his federal taxable estate to zero. Because his taxable estate is zero, no Washington estate tax is due.

(iii) The federal taxable estate of a recent decedent is \$100,000. The adjusted taxable estate is \$40,000 (\$100,000 - \$60,000). No Washington estate tax is due. Section 2011 of the IRC provides for no credit unless the adjusted taxable estate exceeds \$40,000.

(iv) One year before a widower's death, he makes an absolute transfer of almost all of his property to his son. The widower's federal tax liability was computed on the basis of an "adjusted taxable gifts" value of \$750,000 (the amount of the transfer to the son) and a taxable estate of \$3,000 (the remainder of the widower's estate). Since no federal credit is available on an estate valued at \$3,000, no Washington estate tax is due, and there is no Washington gift tax.

(v) A widow dies, leaving a taxable estate of \$290,000. The amount of tax payable to the state of Washington, equiv-

alent to the federal death tax credit, is computed as follows: Taxable estate of \$290,000, less \$60,000, equals an adjusted taxable estate of \$230,000. The unified credit (IRC Section 2011) on the first \$140,000 is \$1,200. The credit for the \$90,000 increment (\$230,000 - \$140,000) is \$2,160 (2.4% of \$90,000). The total Washington estate tax liability is \$3,360 (\$1,200 + \$2,160).

(vi) A widower dies, leaving a taxable estate of \$678,000. The amount of tax payable to the state of Washington, equivalent to the federal credit for state death taxes (section 2011 of the IRC), is computed as follows: Taxable estate of \$678,000, less \$60,000, equals an adjustable taxable estate of \$618,000. The table in subsection (4)(a) of this rule shows that the federal credit for state death taxes on the first \$440,000 is \$10,000. The credit for the \$178,000 increment (\$618,000 - \$440,000) is \$7,120 (.04 x \$178,000). The total Washington estate tax liability appears to be \$17,120 (\$10,000 + \$7,120).

However, when the person responsible calculates the federal estate tax and files the federal estate tax return for this widower's estate, he/she is able to apply other applicable federal estate tax credits before any of the credit for state death taxes is applied. In the end, only \$10,360 of the credit for state death taxes is applied to the federal estate tax, which leaves no payment due on the federal return. Since the amount of state estate tax liability cannot exceed the amount of state death tax credit actually applied to the federal tax, the amount of state estate tax due on the state return is limited to \$10,360.

NEW SECTION

WAC 458-57-025 Determining the tax liability of nonresidents. (1) **Introduction.** This rule discusses how property of nonresident decedents is taxed if that property is located within Washington at the time of death.

(2) **Nonresident decedents and Washington's estate tax.** If any decedent has tangible personal property and/or real property located in Washington state at the time of death, that property is subject to Washington's estate tax.

(a) **The reciprocity exemption.** A nonresident decedent's estate is exempt from Washington's estate tax if the nonresident's state of domicile exempts the property of Washington residents from estate, inheritance, or other death taxes normally imposed by the domicile state. The nonresident decedent must have been a citizen and resident of the United States at the time of death. Also, at the time of death the laws of the domicile state must have made specific reference to this state, or must have contained a reciprocal provision under which nonresidents of the domicile state were exempted from applicable death taxes with respect to property or transfers otherwise subject to the jurisdiction of that state.

In those instances where application of this provision results in loss of available federal credit which would otherwise be allowed for federal tax purposes, Washington will absorb that proportional share which is applicable to property within the jurisdiction of this state. Application of this provision will not act to increase the total tax obligation of the estate.

(b) Property of a nonresident's estate which is located in Washington. A nonresident decedent's estate may have either real property or tangible personal property located in Washington at the time of death.

(i) All real property physically situated in this state, with the exception of federal trust lands, and all interests in such property, are deemed "located in" Washington. Such interests include, but are not limited to:

- (A) Leasehold interests;
- (B) Mineral interests;
- (C) The vendee's (but not the vendor's) interest in an executory contract for the purchase of real property;
- (D) Trusts (beneficial interest in trusts of realty); and
- (E) Decedent's interest in jointly owned property (e.g., tenants in common, joint with right of survivorship).

(ii) Tangible personal property of a nonresident decedent shall be deemed located in Washington only if:

(A) At the time of death the property is situated in Washington; and

(B) It is present for a purpose other than transiting the state.

(iii) For example, consider a nonresident decedent who was a construction contractor doing business as a sole proprietor. The decedent was constructing a large building in Washington. At the time of death, any of the decedent's equipment that was located at the job site in Washington, such as tools, earthmovers, bulldozers, trucks, etc., would be deemed located in Washington for estate tax purposes. Also, the decedent had negotiated and signed a purchase contract for speculative property in another part of Washington. For estate tax purposes, that real property should also be considered a part of the decedents' estate located in Washington.

(c) **Formula to calculate Washington's estate tax for nonresident decedents.** The amount of tax payable to Washington for a nonresident decedent equals the amount of federal credit multiplied by a fraction, the numerator of which is the value of the property located in Washington, and the denominator of which is the value of the decedent's gross estate. Restated: Federal Credit x (Gross Value of Property in Washington/Decedent's Gross Estate)= Amount of Washington Estate Tax Due. This formula uses the gross value determined for federal estate tax purposes of any property located in Washington. No reduction will be allowed for any mortgages, liens, or other encumbrances or debts associated with such property except to the extent allowable in computing the gross estate for federal estate tax purposes.

NEW SECTION

WAC 458-57-035 Washington estate tax return to be filed—Penalty for late filing—Interest on late payments—Waiver or cancellation of penalty—Application of payment. (1) **Introduction.** This rule discusses the due date for filing of Washington's estate tax return and payment of the tax due. It explains that a penalty is imposed on the taxes due with the state return when the return is not filed on or before the due date, and that interest is imposed when the tax due is not paid by the due date. The rule also discusses the limited circumstances under which the law allows the

department of revenue to cancel or waive the penalty, and the procedure for requesting that cancellation or waiver.

(2) Filing the state return—Payment of the tax due.

The Washington estate tax return (state return) referred to in RCW 83.100.050 and a copy of the federal estate tax return (federal return) must be filed on or before the date that the federal return is required to be filed. The tax due with the state return must be paid on or before the date that the federal estate tax is required to be paid.

(a) Section 6075 of the Internal Revenue Code (IRC) requires that the federal return be filed within nine months after the date of the decedent's death. In the case of any estate for which a federal return must be filed, a state return must be filed with the Washington state department of revenue (department) on or before the date on which the federal return is required to be filed. (This may include a federally granted extension of time for filing. See subsection (2)(b).)

(b) Section 6081 of the IRC permits the granting of a reasonable extension of time for filing the federal return, generally not to exceed six months from the original due date. If a federal extension of the time to file is granted, the personal representative is required to file a true copy of that extension with the department on or before the original due date, or within thirty days of the issuance of the federal extension, whichever is later. RCW 83.100.050(2). If the personal representative fails to do so, the department may require the personal representative to file the state return on the date that the federal return would have been due had the federal extension not been granted.

(c) When the personal representative obtains an extension of time for payment of the federal tax, or elects to pay that tax in installments, the personal representative may choose to pay the state estate tax over the same time period and in the same manner as the federal tax. The personal representative is required to file a true copy of that extension with the department on or before the original due date, or within thirty days of the issuance of the federal extension, whichever is later. RCW 83.100.060(2). If the personal representative fails to do so, the department may require the personal representative to pay the state tax on the date that the federal tax would have been due had the federal extension not been granted.

(d) The department shall issue a release when Washington's estate tax has been paid. Upon issuance of a release, all property subject to the tax shall be free of any claim for the tax by the state. RCW 83.100.080.

(3) **The late filing penalty.** If the state return is not filed by the due date, or any extension of the state return's due date, the person required to file the federal return shall pay a penalty equal to five percent of the tax due for each month the report has not been filed. RCW 83.100.070. The total penalty may not exceed twenty-five percent of the tax. The penalty is the equivalent of five percent for each month, but is accrued on a daily basis for those periods less than a month. For any portion of a month, it is calculated by taking the five percent monthly rate and dividing it by the number of days from the beginning of the month through the date the return is filed, including the filing date.

(a) For example, assume a state return is due on February 3rd but is not filed until April 20th of the same year. The

state return is delinquent starting with February 4th. The amount of tax due with the state return is \$10,000. The penalty should be computed as follows:

Feb 4-Mar 3	\$10,000 tax at 5% per month	\$500.00
Mar 4-Apr 3	\$10,000 tax at 5% per month	\$500.00
Apr 4-Apr 20	\$10,000 tax at .1667% x 17 days	\$283.39

Total delinquent penalty due on April 20th filing date	\$1,283.39
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In this example, the first two calendar months are complete and incur the full five percent penalty. The last portion of a month is a total of seventeen days, including both April 4th and April 20th. Since April has thirty days total, the five percent monthly rate is divided by the thirty days in April to arrive at a daily rate of .001667 (or .1667 percent). The daily rate is then multiplied by the seventeen days of penalty accrual to arrive at the total percentage of penalty due for that portion of a month (.001667 x 17 days = .028339 or 2.8339 percent).

(b) If a federal extension of the due date is requested, the penalty provided for late filing of the state return will be imposed if the state return is filed after the due date and the federal extension is ultimately denied.

(4) **Interest is imposed on late payment.** The department is required by law to impose interest on the tax due with the state return if payment of the tax is not made on or before the due date. RCW 83.100.070. Interest applies to the delinquent tax only, and is calculated from the due date until the date of payment. Interest imposed for periods after December 31, 1996, will be computed at the annual variable interest rate described in RCW 82.32.050(2). Interest imposed for periods prior to January 1, 1997, will be computed at the rate of twelve percent per annum.

(5) **Waiver or cancellation of penalties.** RCW 83.100.070(3) authorizes the department to waive or cancel the penalty for late filing of the state return under limited circumstances.

(a) **Claiming the waiver.** A request for a waiver or cancellation of penalties should contain all pertinent facts and be accompanied by such proof as may be available. The request must be made in the form of a letter and submitted to the department's special programs division. The person responsible bears the burden of establishing that the circumstances were beyond the responsible person's control and directly caused the late filing. The department will cancel or waive the late filing penalty imposed on the state return when the delinquent filing is the result of circumstances beyond the control of the person responsible for filing of the state return. The person responsible for filing the state return is the same person who is responsible for filing the federal return.

(b) **Circumstances eligible for waiver.** In order to qualify for a waiver of penalty the circumstances beyond the control of the person responsible for filing the state return must directly cause the late filing of the return. These circumstances are generally immediate, unexpected, or in the nature of an emergency. Such circumstances result in the person responsible not having reasonable time or opportunity to

obtain an extension of their due date (see subsection (2)(b)) or to otherwise timely file the state return. Circumstances beyond the control of the responsible person include, but are not necessarily limited to, the following:

(i) The delinquency was caused by the death or serious illness of the person responsible for filing the state return or a member of the responsible person's immediate family. In order to qualify for penalty waiver, the death or serious illness must directly prevent the person responsible from having reasonable time or opportunity to arrange for timely filing of the state return. Generally, the death or serious illness must have occurred within sixty days prior to the due date, provided that a valid state return is filed within sixty days of the due date.

(ii) The delinquency was caused by an unexpected and unavoidable absence of the person responsible. Generally, this absence must be within sixty days prior to the due date, provided that a valid state return is filed within sixty days of the due date. "Unavoidable absence of the person responsible" does not include absences because of business trips, vacations, personnel turnover, or personnel terminations.

(iii) The delinquency was caused by the destruction by fire or other casualty of estate records necessary for completion of the state return.

(iv) An estate tax return was timely filed, but was filed incorrectly with another state due to an issue of the decedent's domicile.

(v) A Washington estate tax return was properly prepared and timely filed, but was sent to the location for filing of the federal estate tax return.

(6) **Waiver or cancellation of interest.** Title 83 RCW (Estate Taxation) does not provide any circumstances that allow for waiver of the interest, even though penalty may be waived under limited circumstances (see subsection (5)).

(7) **Application of payment towards liability.** The department will apply taxpayer payments first to interest, next to penalties, and then to the tax, without regard to any direction of the taxpayer.

NEW SECTION

WAC 458-57-045 Administration of the tax—Releases, amended returns, refunds, heirs of escheat estates. (1) **Introduction.** This rule contains information on releases issued by the department for state estate taxes paid. It explains how and when an amended state return should be filed, and states the time limit for claiming a refund of overpaid taxes. The rule also gives several requirements for notification to the department when a claimed heir to an escheat estate is located.

(2) **Releases.** When the state estate taxes have been paid in full, the department will issue a release to the personal representative upon request. The request will include a completed state return and a copy of the completed federal return. The final determination of the amount of taxes due from the estate is contingent on receipt of a copy of the final closing letter issued by the Internal Revenue Service (IRS). The department may require additional information to substantiate information provided by the estate. The release issued by

the department will not bind or estop the department in the event of a misrepresentation of facts.

(3) **Amended returns.** An amended state return must be filed with the department within five days after any amended federal return is filed with the IRS and must be accompanied by a copy of the amended federal return.

(a) Any time that the amount of federal tax due is adjusted or when there is a final determination of the federal tax due the person responsible must give written notification to the department. This notification must include copies of any final examination report, any compromise agreement, the state tax closing letter, and any other available evidence of the final determination.

(b) If any amendment, adjustment or final determination results in additional state estate tax due, interest will be calculated on the additional tax due at the annual variable interest rate described in RCW 82.32.050(2).

(4) **Refunds.** Claims for refund of taxes overpaid must be initiated within one year of the time the taxes are first paid to the state of Washington. Only the personal representative or the personal representative's retained counsel may make such claim. Any refund issued by the department will include interest at the existing statutory rate defined in RCW 82.32.050(2), computed from the date the overpayment was received by the department until the date it is mailed to the estate's representative. RCW 83.100.130(2).

(5) **Heirs of escheat estates.** Heirs to an estate may be located after the estate escheats to Washington. The personal representative of an escheat estate or a claimed heir must provide the department with all information and documentary evidence available that supports the heir's claim. All supporting documents must be in the English language when submitted to the department. The English translation of any foreign document shall be authenticated as reasonably required by the department.

(a) In all cases where there is a court hearing or the taking of a deposition on the question of a claimed heir, the personal representative shall give the department twenty days' written notice of such hearing or matter.

(b) The personal representative must give the department at least twenty days' written notice of the hearing on the final account and petition for distribution.

PROPOSED



WSR 99-10-069
EXPEDITED ADOPTION
DEPARTMENT OF
GENERAL ADMINISTRATION
[Filed May 4, 1999, 9:52 a.m.]

Title of Rule: Procurement.

Purpose: To propose amendments to the WAC 236-48-003, 236-48-011, 236-48-012, 236-48-013, 236-48-021, 236-48-024, 236-48-025, 236-48-035, 236-48-036, 236-48-071, 236-48-079, 236-48-083, 236-48-085, 236-48-094, 236-48-096, 236-48-098, 236-48-099, 236-48-111, 236-48-121, 236-48-122, 236-48-123, 236-48-124, 236-48-132, 236-48-141, 236-48-142, 236-48-143, 236-48-153, 236-48-165, 236-48-166, 236-48-167, 236-48-230, 236-48-250, 236-48-251, 236-48-252, 236-48-253, 236-49-001, 236-49-010, 236-49-020, 236-49-055, and 236-49-060.

Statutory Authority for Adoption: Chapter 43.19 RCW.

Summary: These amendments streamline the internal procurement process and add additional flexibility to that process to enable the Office of State Procurement to improve our business.

Reasons Supporting Proposal: These amendments are the result of extensive input received from customers, businesses and the Office of State Procurement staff and management.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Sherm Heathers, Olympia, (360) 902-7283.

Name of Proponent: Office of State Procurement

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: These rules govern the procurement process for the purchase of goods and services by the Office of State Procurement and all general government agencies. These amendments update existing rules and streamline our internal procurement process while adding flexibility to that process for the future. These changes will enable us to improve the way we do business.

Proposal Changes the Following Existing Rules: See sections below.

NOTICE

THIS RULE IS BEING PROPOSED TO BE ADOPTED USING AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS RULE BEING ADOPTED USING THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Sherm Heathers, Department of General Administration, Office of State Procurement, P.O. Box 41017, Olympia, WA 98504-1017, AND RECEIVED BY July 17, 1999.

April 26, 1999

Pat Kohler
Assistant Director

[AMENDATORY SECTION (Amending WSR 91-09-035, filed 4/12/91)]

WAC 236-48-003 Definitions. As used in this chapter the following terms shall have the following meanings: additional terms shall have meanings as outlined under WAC 236-49-010:

(1) Agency. Shall include state of Washington institutions, ((colleges, community colleges and universities,)) the offices of the elective state officers, the supreme court, the court of appeals, the administrative and other departments of state government, and the offices of all appointive officers of the state. "Agency" does not include the legislature but does include colleges, community colleges and universities who choose to participate in state contract(s).

(2) All or nothing award. A method of award resulting from a competitive solicitation by which the purchaser will award all items to a single bidder.

((2))) (3) Alternate. A substitute offer of ((G)) goods and services which are not at least a functional equal in features, performance ((or)) and use ((of the brand, model or specification designated as the standard)) and which materially deviates from one or more of the specifications in a competitive solicitation.

((3))) (4) Bid. A written offer to perform a contract to purchase or supply goods or services in response to an invitation for bid.

((4))) (5) Bidder. A supplier who submits a bid, ((or)) quotation or proposal.

((5))) (6) Bidder's bond. As used in RCW 43.19.1915 shall mean either a bid guarantee or performance guarantee as addressed herein and as further outlined in WAC 236-48-035 through 036.

(7) Brand: A specification identifying a manufacturer of the goods described in a competitive solicitation to identify a standard of quality against which other products will be evaluated.

((7))) (8) Confidential information. Any information meeting the criteria in RCW 42.17.310 or any information designated as confidential pursuant to state law.

((8))) (9) Contractor. Individual, company, corporation, firm, or combination thereof with whom purchaser develops a contract for the procurement of goods and services.

((9))) (10) Delegated authority. Authority to purchase goods and/or services delegated to an agency by office of state procurement pursuant to RCW 43.19.190(4) and which is delegated in ((three forms)) one of the following forms:

(a) General. Those purchases delegated ((annually)) by the office of state procurement which are common to multiple state agencies.

(b) Specific. Those purchases delegated ((annually)) to specific agencies for continuing individual commodity requirements.

(c) Limited. Those purchases delegated to a specific agency for one-time commodity requirements.

((10))) (11) Direct buy limit. Dollar amount ((established by the supply management advisory board)) pursuant to RCW 43.19.1906(2) below which ((competitive acquisition is)) competition is not required.

((11))) (12) Director. Except where otherwise specifically noted shall mean the state purchasing and material con-

tral director, who is the assistant director, office of state procurement.

((12)) (13) Emergency purchase. A purchase made pursuant to RCW 43.19.200 in which the normal competitive purchasing procedures have been waived by a declaration of emergency issued by the agency director as defined in RCW 43.19.200.

((13)) (14) Equal. An offer of goods and/or services which meets or exceeds the quality, performance and use of the ((brand, model, or)) specifications identified in a competitive solicitation ((the invitation for bid or request for quotation)).

((14)) (15) Fair market price. ((The price determined pursuant to RCW 43.19.530)) That price determined by the purchasing activity to be consistent with current market value for the goods or services being purchased from community rehabilitation programs and eligible programs of the department of social and health services which has been determined pursuant to RCW 43.19.530.

((15)) (16) Formal sealed bid procedure. Procedure by which the ((buyer)) purchasing activity solicits written competitive bids or proposals from a sufficient number of prospective bidders ((drawn from established supplier lists and from any other source)) thought to be of advantage to the state to assure adequate price and product competition by means of a written invitation for bid (IFB) or request for proposal (RFP) or other solicitation method setting forth specifications and all material and objectively measurable criteria for the intended purchase. Unless exception(s) are authorized in the solicitation document for electronic bid procedures. ((A)) all bids are to be submitted in sealed envelopes to the location indicated in the bid documents and must be received by the time indicated therein. No disclosure of bids or bid information is made prior to the public bid opening. After the ((public)) bid opening, all bid information shall be referred to the ((buyer)) purchasing activity and treated as confidential working papers until after award at which time all bids become public information. The award is to be made in accordance with RCW 43.19.1911.

((16)) (17) Goods and/or services. Material, supplies, services, and equipment offered for sale by a supplier(s) and required by an agency to accomplish continuing and necessary functions and not otherwise statutorily exempted from chapter 43.19 RCW. ((as a personal service under RCW 39.29.006(8); an architectural and engineering service under RCW 39.80.020(5); or data information systems and telecommunications equipment, software, and services under chapter 43.105 RCW)).

((17)) (18) Informality. An immaterial variation from the exact requirements of the competitive solicitation ((invitation for bids)), having no effect or merely a minor or negligible effect on quality, quantity, or delivery of the supplies or performance of the services being procured, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial to bidders.

((18)) (19) Invitation for bid. The form utilized to solicit bids in the formal, sealed bid procedure and any amendments thereto issued in writing by the ((buyer)) purchasing activity. Factors impacting cost and conditions of responsiveness and responsibility are normally evaluated.

Non-cost factors may be evaluated and all factors may be weighted if considered appropriate.

((19)) (20) Office of state procurement. The division of purchasing of the department of general administration in RCW 43.19.180 et seq. Whenever a purchase or sale is made by the office of state procurement on behalf of another agency, the office of state procurement is acting in the capacity of agent for such agency.

(21) Prompt payment discount. A discount offered by the bidder to encourage timely payment by purchaser within the stated term identified by bidder.

(22) Proposal. An offer to perform a contract to supply goods or services in response to a request for proposal.

(23) Public agency. Shall include all agencies outlined under RCW 39.34.020.

((20)) (24) Purchase. Shall include purchase, lease, renting or lease-purchase of goods and services.

((21)) (25) Purchasing activity. The office of state procurement or an agency authorized by state statute to conduct acquisition of goods and services or delegated that authority by the office of state procurement.

((22)) (26) Quotation. An offer to perform a contract to supply goods and/or services in response to a request for quotation.

((23)) (27) Recovered material. Goods containing recovered materials as defined in RCW 43.19.537 et seq. and federal, regional, or state guidelines approved by the director.

((24)) (28) Request for quotation. The form used ((when purchases are)) to solicit((ed)) written quotations in accordance with RCW 43.19.1906(2). The request and the quote in response may be either written or oral as specified by the ((buyer)) purchasing activity. Factors impacting cost and conditions of responsiveness and responsibility are normally evaluated. Non-cost factors may be evaluated and all factors may be weighted if considered appropriate.

(29) Request for proposal: The form utilized to solicit written proposals from potential suppliers. Both cost and non-cost factors are evaluated in addition to conditions of responsiveness and responsibility to achieve best value. A weighted point assignment method of evaluation may be used if considered appropriate.

((25)) (30) Requisition. A standard state form which serves as a procurement request and which requests the office of state procurement to purchase stated requirements.

((26)) (31) Sealed bid limit. That dollar amount established by RCW 43.19.1906(2) or subsequently amended by the office of financial management due to inflationary trends ((pursuant thereto)) above which the formal sealed bid procedure will be used. ((Said amount may be lowered by the director to maintain full disclosure or competitive procurement or otherwise achieve overall state efficiency and economy)).

((27)) (32) Single source purchase. A purchase of goods or services which is clearly and legitimately limited to a single source of supply.

(33) Solicitation. The process of notifying prospective bidders or offerors that the purchasing activity desires to receive competitive bids, quotes or proposals for furnishing goods or services. Also includes reference to the actual document used in that process.

((28)) (34) Specifications. The explicit requirements furnished with a competitive solicitation ((an invitation for bid or request for quotation)) upon which a purchase order or contract is to be based. Specifications set forth the characteristics of the goods and/or services to be purchased or sold ((so as)) to enable the bidder or supplier to determine and understand ((that which is to be supplied or sold)) requirements of the purchaser. ((This information)) Specifications may be in the form of a description of the physical or performance characteristics, a reference brand ((name)) or both. It may include a description of any requirement for inspecting, testing, or preparing a material, equipment, supplies, or service for delivery.

((29)) (35) State contract. Contracts for goods and/or services administered by the office of state procurement on behalf of agencies which normally include an indefinite quantity and fixed term. The contract document will identify the conditions under which usage by agencies is required.

((6)) (36) ((Buyer)) State procurement officer. An employee of the office of state procurement designated as a ((buyer)) state procurement officer, contract administrator, or similar designation by the director, including, where appropriate, the director and other management personnel. ((Also, authorized employee(s) of a purchasing activity))

((30)) (37) Supplier. A vendor of purchased goods and services.

((31)) (38) Supplier list. List of potential bidders maintained by the office of state procurement or purchasing activity from which names may be drawn for solicitation of bids, quotes or proposals.

((32)) (39) Used equipment. Goods offered for sale to the state which do not have a full factory warranty and which are not being rented, leased, or otherwise in the actual possession of the state agency considering the purchase at the time of the purchase transaction.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

[AMENDATORY SECTION (Amending Order 89-02, filed 8/22/89)]

WAC 236-48-011 Public notice. A listing or copy of all purchases being made through formal sealed bid by or through the office of state procurement shall be posted in the foyer of the office of state procurement ((, Room 216, General Administration Building, Olympia, Washington 98504-4017)) and/or posted via internet website or made available via other electronic means. Purchases made by ((colleges or universities)) agencies shall be posted or otherwise publicized by ((the purchasing office of that college or university)) that purchasing activity in accordance with policy established by that agency.

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[AMENDATORY SECTION (Amending WSR 91-09-035, filed 4/12/91)]

WAC 236-48-012 ((Bidding or quoting time.)) Receipt of bids, quotes or proposals. The ((bidding or quoting)) date and time selected for opening of bids, quotes or proposals shall be ((as)) determined by the ((buyer involved)) purchasing activity. ((All invitations for bid shall provide)) Bidders shall be provided sufficient time ((to allow bidders an opportunity)) to prepare and submit their bid, quote or proposal. The ((buyer)) purchasing activity shall have the discretion to lengthen or shorten ((bid or quote times)) bid, quote or proposal dates, should special circumstances or needs dictate a shorter or longer time frame. When extending or shortening the time allowed to submit a bid, or quote, or proposal, the ((buyer is to)) purchasing activity shall issue an addendum notifying bidders of the revised opening/due date. If it is determined that ((regular mail)) this information will not reach bidders in time to respond, the ((buyer)) purchasing activity shall attempt to notify each prospective bidder by telephone or other available means of communication. All bids must be received in the office of the purchasing activity by the date and time specified ((for bid opening)) in the document or addenda. No deviations will be allowed. Late bids or proposals will be returned unopened unless retention is deemed by the ((director)) purchasing activity to be in the best interests of the ((state)) agency. Late bids or proposals may be opened only by authorized personnel for identification purposes. Quotations must be received by close of the normal business day on the date indicated. Late quotations will not be considered or returned to bidders. Time of receipt will be determined by the official time stamp located at the purchasing activity or in the case of electronic bids, time of receipt shall be as identified in the solicitation document issued by the purchasing activity.

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[AMENDATORY SECTION (Amending WSR 91-09-035, filed 4/12/91)]

WAC 236-48-013 Amendment of invitation to for bid, request for quotation or request for proposal. An invitation for bid, request for quotation or request for proposal may be changed or amended by the ((buyer involved)) purchasing activity, provided the change is issued ((in writing)) prior to the ((bid)) opening date and time specified. Any material information provided a prospective bidder ((with regard to an invitation for bid)), shall be furnished ((in writing)) by the ((buyer)) purchasing activity to all bidders receiving a copy of the original solicitation ((invitation)). Oral interpretations of contract terms and conditions shall not

be binding. ((on the state unless confirmed in writing by the buyer)).

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

[AMENDATORY SECTION (Amending WSR 91-09-035, filed 4/12/91)]

WAC 236-48-021 Supplier lists. Supplier lists may be maintained by the office of state procurement. Opportunities for doing business with the office of state procurement include: (a) register on supplier list (b) review website maintained by the office of state procurement or (c) contact office of state procurement staff for information about current opportunities. ((are categorized according to specific categories of purchased goods and services and are maintained and updated by the office of state procurement. Such lists are used by buyers to determine suppliers from which to solicit bids. Due to cost considerations not all suppliers are solicited for each bid invitation. In order to be considered for inclusion on a supplier list, suppliers must apply to the office of state procurement. A purchasing activity may deny issuance of a bid to a prospective supplier for reason(s) outlined under WAC 236-48-024 until such supplier registers on a supplier list when requested. The office of state procurement may deny or limit placement on supplier list(s) for reason(s) outlined under WAC 236-48-024.))

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

[AMENDATORY SECTION (Amending Order 89-02, filed 8/22/89)]

WAC 236-48-024 Removal or suspension. The director, or designee, may remove or suspend a supplier from any supplier list(s) maintained by the office of state procurement for cause. Impacted state agencies will be notified of such action(s). Agencies may continue to do business with such supplier if they choose to do so or they may sever that relationship at their discretion. Examples of reasons for removal or suspension include but are not limited to the following:

- (1) Illegal act(s);
- (2) Repetitive failure to respond to invitations to bid;
- (3) Unreasonable number of "no bid" responses;
- (4) Any material failure to perform, e.g., delivery, quality;
- (5) Any significant detrimental change in supplier status, e.g., financial condition, lines carried, service ability;
- (6) Unauthorized product substitution, or representation of an alternate as an equal; or
- (7) Discriminatory practices.

Any supplier so removed or suspended shall be notified in writing of the reason(s) therefore, the conditions of any removal or suspension, and/or corrective action required for reinstatement.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

[AMENDATORY SECTION (Amending Order 89-02, filed 8/22/89)]

WAC 236-48-025 Appeal, reapplication or reinstatement. Any supplier removed from a supplier list maintained by the office of state procurement or who is not placed upon such list after request, may appeal the decision to the director or designee. If such an appeal is made, it must be submitted in writing within ten days of notification of the action taken.

If a supplier's application to be placed on a supplier list has been refused, or if a supplier has been removed or suspended from such list, that supplier may reapply to be placed on such list, or apply for reinstatement when the conditions for reinstatement have been met.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

[AMENDATORY SECTION (Amending WSR 91-09-035, filed 4/12/91)]

WAC 236-48-035 Bid guarantee. When required in the ((invitation for bid)) competitive solicitation, all bidders shall provide with their bid a bid guarantee unilaterally payable to the purchasing activity. The amount of the bid guarantee shall be identified in the ((invitation for bid)) competitive solicitation document in dollars and shall be sufficient to ((redress)) cover damages to the ((state)) purchasing activity in the event of that bidder ((withdrawal as determined by the buyer)) fails to accept a contract award with the purchasing activity. Failure of bidder to accept an award will result in forfeiture of the bid guarantee and such funds made payable to the Washington state treasury as liquidated damages.

Bid guarantees may be in the form of a certified check, cashier's check, escrow agreement, or irrevocable letter of credit drawn on a separate account in a banking or savings and loan institution regulated by the state of Washington or federal government, cash or a surety bond with a surety company. Surety bonds or escrow agreements must be on a form approved by the purchasing activity. Personal or company checks are not acceptable. Failure to submit a bid guarantee in the specified form will be a cause for rejection. Bid guarantees shall be returned to bidders after award of contract. Interest will not be paid on funds deposited directly with the state. ((Bidders who regularly conduct business with the purchasing activity shall be permitted to file an annual bid guarantee in lieu of bid guarantees for individual contracts in an amount determined by the purchasing activity. When a bid guarantee is submitted, the bidder covenants that he/she will accept a contract award. Violation of this covenant will result in forfeiture of the bid guarantee and payment of the same into the Washington state treasury as and for liquidated damages.))

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Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

[AMENDATORY SECTION (Amending WSR 91-09-035, filed 4/12/91)]

WAC 236-48-036 Performance guarantees. When required in the ~~((invitation for bid)) competitive solicitation~~, the successful bidder shall post a performance guarantee unilaterally payable to the purchasing activity ~~((after notice of award))~~. The amount of the performance guarantee shall be identified in the ~~((invitation for bid)) competitive solicitation~~ in dollars and/or a percentage of contract worth sufficient to redress damages to the ~~((state)) purchasing activity~~ in the event of breach by the contractor(s). The required performance guarantee shall be in the form of a certified check, cashier's check, escrow agreement, or irrevocable letter of credit drawn on a separate account in a banking or savings and loan institution regulated by the state or federal government, cash, or surety bond with a surety company. Surety bonds or escrow agreements must be on a form approved by the purchasing activity. Personal or company checks are not acceptable. The performance guarantee shall be held by the ~~((state)) purchasing activity~~ or deposited to the ~~((state)) purchasing activity's~~ account until contract terms have been fully executed to the satisfaction of the state. Interest will not be paid on funds deposited directly with the ~~((state)) purchasing activity~~. Failure to submit a performance ~~((bond)) guarantee~~ as required ~~((in the invitation for bid))~~ shall be grounds for contract termination.

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[AMENDATORY SECTION (Amending WSR 91-09-035, filed 4/12/91)]

WAC 236-48-071 Form of bid, quote or proposal. To receive consideration, bids, ~~((and))~~ quotes, and proposals must be legible and shall be made on the form provided by the purchasing activity, or on a letter containing the information. If a letter is used it must meet the satisfaction of the ~~((buyer)) purchasing activity~~, be properly headed and signed, properly marked on the outside of the envelope, received by the date and time specified, and be accompanied by a signed and completed ~~((bid))~~ solicitation form provided by the purchasing activity. Unless otherwise authorized, ((B))bids, quotes and proposals must be filled out in ink or with ~~((type-writer))~~ electronic printer or other similar office equipment and properly signed by an authorized representative of the bidder. All changes and/or erasures shall be initialed in ink. ~~((The buyer may declare that a quotation (not a bid) prepared in pencil is an informality and may accept and consider a clear pencil quotation.))~~ Unsigned bids will be rejected on opening. However, the ~~((buyer))~~ purchasing activity may accept such bids if it is determined that satisfactory evidence

was submitted prior to ~~((bid))~~ opening date and time which clearly indicates the bidder's desire to be bound by his/her bid such as a signed cover letter ~~((or bid bond))~~.

In lieu of the requirement for an original signature as outlined above, the purchasing activity may implement a policy which authorizes the use of digital signature(s) or electronic submission of bid, quote or proposals provided that such policy provides adequate safeguards to ensure the integrity of the sealed bid process.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

[AMENDATORY SECTION (Amending WSR 91-09-035, filed 4/12/91)]

WAC 236-48-079 Standard specifications. Specifications contained in the ~~((invitation for bid)) competitive solicitation~~ will, ~~((where practical))~~ to the maximum extent feasible, be nonrestrictive so as to provide an equal basis for competition and participation by an optimum number of qualified bidders. ~~((Unless otherwise specifically provided in the invitation for bid, reference to any equipment, material or supplies by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition.))~~ The purchasing activity may specify a brand name or equal provided that the intent in doing so is to establish a standard of quality against which other brands will be evaluated. When doing so, the purchasing activity should not substitute the word "equivalent" for "equal" in the competitive solicitation document. All bids, quotes or proposals which offer a different trade name, make, or catalog number must state whether the item offered is an equal or an alternate, and literature which describes the item offered must be provided ~~((when available))~~. The final decision as to whether an item is an equal or an alternate shall rest with the purchasing activity. ~~((In the absence of a bidder's statement of a bid being an "alternate" it shall be evaluated as an "equal."))~~ In the event of discrepancies in specifications, or doubts as to meaning, the bidder shall immediately request clarification from the purchasing activity. To facilitate consistent responses and to ensure all bidders receive the same information, all such questions shall be directed only to that person directly assigned by the purchasing activity or otherwise identified in the bid, quote or proposal document.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

[AMENDATORY SECTION (Amending WSR 91-09-035, filed 4/12/91)]

WAC 236-48-083 Acceptance of alternate bid, quote or proposal. The ~~((buyer))~~ purchasing activity ~~((shall be under no obligation whatever to))~~ need not accept alternate bids, or quotes or proposals but shall have the discretion to ~~((accept a bid or quote))~~ do so if it substantially conforms to the bid specifications. Unless their bid, quotation or proposal is clearly identified as an alternate, bidders warrant the goods and/or services ~~((bid))~~ offered to be at least equal to specifications indicated by purchaser ~~((on the invitation for bid or~~

~~request for quotation)) and shall submit with their bid, ((or)) quotation or proposal complete documentation ((sufficient to so establish)) to enable the purchasing activity to ((so)) evaluate. Bids, quotations or proposals without sufficient documentation may be rejected. If a bidder misrepresents ((their)) goods and/or services bid as being an equal when it is an alternate, their bid, quotation or proposal may be rejected and bidder will be liable for damages caused by the misrepresentation.~~

Where required by the purchasing activity, the bidder shall, at bidder's expense, provide product samples and/or descriptive literature with returned bid, quote or proposal. If not received within the required time period or as otherwise required, the purchasing activity may reject the bid, quote or proposal as non-responsive. If not destroyed in testing or if sample is not required by the purchasing activity to be retained for demonstration purposes, bidders may request return of samples at their expense. Samples not claimed within ten days after notification may be disposed of as deemed necessary without cost to the purchasing activity.

If necessary, the purchasing activity may require competitive demonstrations at bidder's expense to ensure that the proposed product satisfactorily meets the purchaser's needs.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

[AMENDATORY SECTION (Amending Order 89-02, filed 8/22/89)]

WAC 236-48-085 In-state preference bids. ~~((In accordance with the Laws of 1983 and chapter 43.19 RCW, the director of general administration)) The office of state procurement shall compile a list of each state, relating to state purchasing practices, ((which)) whose statutes or regulations ((the director believes)) grant a preference to suppliers located within that state or ((to)) goods manufactured within that state. This list shall be updated on an annual basis and shall include only those states with currently active in-state preference clauses for procuring goods and services and the list shall contain the percentage of preference allowed. States with only reciprocity legislation will not be included on the list. The office of state procurement ((will be responsible for the official compilation of)) shall compile the list and ((notification to)) notify impacted state agency, college and university purchasing offices. ((The notification shall be made by office of state procurement circular letter.))~~

~~((For the purposes of)) In determining whether to assess a percentage ((penalty))-increase against a ((supplier's bid)) bidder, and the amount of that ((penalty))-increase, the buyer in charge of the bid or proposal will consider only the business address from which the bid was submitted. ((It is recognized that under certain circumstances this will adversely affect bidders with in-state operations whose bids are prepared centrally in an out-of-state office.))~~

((Buyers)) The purchasing activity will add the appropriate percentage ((penalty)) increase to each bid or proposal bearing the address from a state with in-state preference rather than subtracting a like amount from Washington state bidders.

This action will be used only ((for bid analysis and)) when evaluating bids or proposals for award. In no instance shall the increase be paid to a supplier whose bid is accepted.

This WAC section applies only to formal invitations for bid and requests for proposals solicited in accordance with chapter 43.19 RCW.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

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[AMENDATORY SECTION (Amending WSR 91-09-035, filed 4/12/91)]

WAC 236-48-094 Partial award. ~~((A buyer))~~ The purchasing activity shall have the discretion to award on an "all or nothing" basis as outlined in the competitive solicitation document or to accept any portion of the items bid, excluding others unless the bidder stipulates all or nothing ((or)) in their bid.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

[AMENDATORY SECTION (Amending WSR 94-21-017, filed 10/6/94)]

WAC 236-48-096 Bid award preference. In conducting purchases of goods and/or services, preference shall be given to the extent allowed by statute:

(1) Under RCW 43.19.((536))534, to those goods and services produced in whole or in part by Class II inmate programs operated by the department of corrections as described in WAC 236-49-055. ~~((These goods and services shall be purchased from correctional industries through state contracts administered by the department of general administration, unless upon application by a state agency, the legislature or departments, the director of the department of general administration, or his or her representative, finds that:~~

~~((a)) The correctional industries products or services do not meet the reasonable requirements of the applicant/agency, legislature or department;~~

~~((b)) The correctional industries products or services are not of equal or better quality; or~~

~~((c)) The correctional industries price for the product or service is higher than that available in the private sector.~~

~~However, goods or services produced by Class II correctional industries programs which primarily replace goods manufactured or services obtained from outside the state of Washington are not subject to the criteria contained in subsection (1) of this section, and shall be purchased solely from correctional industries.))~~

((2) To bids responsive to invitations for bid with minority and women's business enterprises (MWBE) goals pursuant to chapter 39.19 RCW and chapter 236-40 WAC.))

((3)) (2) To goods containing recovered material as outlined under RCW 43.19.538 provided that the ((buyer)) purchasing activity sets forth in the ((invitation for bid)) competitive solicitation a minimum percent content of recovered material that must be certified by ((the bidder and)) the producer of the goods to qualify for the preference. Bids for goods so certified shall be given a preference of ten percent of the amount of the bid in determining the lowest responsive bid for any item or grouping of items to be awarded to a single bidder. This preference shall be separate from and applied after any other preferences allowed by statute. The minimum content of recovered material shall be not less than fifteen percent provided that for those goods for which the Environmental Protection Agency has adopted procurement guidelines under the Resource Conservation and Recovery Act of 1976 (Public Law 94-580, 42 U.S.C. §6901 et seq.), as amended, the minimum content of recovered material shall not be less than specified in the most current adopted issue of those guidelines. ((Bidders)) The producer of the goods shall certify the post consumer and recovered or waste material content at the time of submitting bid. To qualify for the preference, the goods shall otherwise be at least functionally equal to all other ((invitation for bid)) specifications and use requirements. The preference shall be used for bid evaluation purposes only and the actual dollars bid shall be the contracted amount. In the event of a tie for lowest responsive bid between products otherwise meeting all bid specifications, the ((buyer)) purchasing activity shall consider the larger post consumer material content as a factor in determining the award. Should the ((buyer)) purchasing activity determine that the use of this preference does not encourage the use of more recovered material for reasons including inadequate competition, economics, environmental constraints, quality or availability, the ((buyer)) purchasing activity shall issue, consider and award bids without the preference. For the purpose of meeting Resource Conservation and Recovery Act requirements for state agency purchase of goods complying with Environmental Protection Agency recovered or waste guidelines, the office of state procurement may adopt specifications requiring that only goods meeting these guidelines are responsive and may consider bids for such goods though the cost exceeds ten percent of goods not meeting such guidelines.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

[AMENDATORY SECTION (Amending WSR 91-09-035, filed 4/12/91)]

WAC 236-48-098 Rejection. No rejection notice will be sent to unsuccessful bidders ((submitting)) whose net pricing (or scoring) after evaluation is higher ((bid/quote pricing)) than awarded. Bidders whose bids are non-responsive ((lower than the lowest responsive bidder)) will be rejected ((as non responsive)) and will be notified of the reasons for such rejection:

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Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

[AMENDATORY SECTION (Amending WSR 91-09-035, filed 4/12/91)]

WAC 236-48-099 Acceptance of terms. Acceptance of bids, or quotes, or proposals shall be expressly limited to the terms and conditions of the ((invitation for bid, or request for quotation)) solicitation document issued by the purchasing activity. All material alterations, additional or different terms proposed by the bidder shall be ((and are)) rejected unless otherwise provided for in the solicitation document ((writing by the director or their designee)) issued by the purchasing activity.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

[AMENDATORY SECTION (Amending Order 89-02, filed 8/22/89)]

WAC 236-48-111 Handling of bids and proposals if publicly opened ((at opening)) The ((person designated as)) purchasing activity's official bid supervisor shall decide when the time set for bid opening has arrived and shall so declare to those present. The bid supervisor shall then personally and publicly open all bids and proposals and read pertinent information as determined by the ((office of state procurement)) purchasing activity for recording. The ((bid)) solicitation form may not be completed, signed, or amended ((or clarified)) by bidders after official opening time. The bid supervisor will, on request, read the documents in detail provided that sufficient time is available. All bids become the property of the purchasing activity when received and ((Bids)) must remain under the control of the bid supervisor or staff.

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Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

[AMENDATORY SECTION (Amending WSR 91-09-035, filed 4/12/91)]

WAC 236-48-121 Mistakes in bid(s) or proposals detected prior to ((bid)) opening. Mistakes in bids or proposals detected prior to ((bid)) opening may be corrected by the bidder by withdrawing the original bid or proposal and submitting a corrected bid or proposal to the purchasing activity before the time specified for ((bid)) opening. If there is not sufficient time prior to bid the time specified for opening to withdraw the original bid or proposal and submit a corrected bid or proposal, the bidder, or an authorized representative, may correct the mistake on the face of the original bid

or proposal: Provided, That the corrected bid or proposal is time stamped by the purchasing activity upon resubmission prior to the time designated ((in the invitation for bid)) for opening.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

[AMENDATORY SECTION (Amending Order 89-02, filed 8/22/89)]

WAC 236-48-122 Mistakes in bid(s) or proposals detected during or after bid opening. Bidder mistakes in a bid or proposal detected during or after bid opening may not be corrected. If the bidder submits evidence in writing satisfactory to the ((director or designee)) purchasing activity that a mistake has been made by the bidder in the calculation of its bid or proposal, the ((director or designee)) purchasing activity may allow the bid or proposal to be withdrawn: Provided, That the claim of mistake and the evidence in support thereof must be made and provided within three business days after the bid or proposal has been opened. Compliance with this section within the specified time limit, shall relieve the bidder of forfeiture of its bid ((bond)) guarantee. If the purchasing activity subsequently reissues the solicitation, the bidder having made the mistake may not participate in that bid or proposal.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

[AMENDATORY SECTION (Amending WSR 91-09-035, filed 4/12/91)]

WAC 236-48-123 Disclosure of ((bid)) information. After bids, quotes or proposals have been received, all such information becomes the property of the purchasing activity and shall not be released or otherwise distributed until after the evaluation has been completed and final award(s) announced. Evaluation team members shall maintain confidentiality of information to ensure the integrity of the process. After award and distribution of award information or posting of such information electronically for public review, the bids, ((and)) quotes, and proposals of all bidders shall be open to public inspection at the offices of the purchasing activity during normal office hours. Copies of documents subject to public disclosure will be made available upon request in accordance with purchasing activity policy. ((Bidders must provide a self addressed stamped envelope to obtain invitation for bid or request for quotation award results by mail. A copy of awarded purchase order or contract will be provided. Unless noted to the contrary in this invitation for bid or request for quotation,)) The purchasing activity assumes no responsibility for the confidentiality of bids, quotes or proposals after award.

Any document(s) or information which the bidder believes is exempt from public disclosure per RCW 42.17.310 shall be clearly identified by bidder and placed in a separate envelope marked with bid number, bidder's name, and the words "proprietary data" along with a statement of the basis for such claim of exemption. The state's sole

responsibility shall be limited to maintaining the above data in a secure area and to notify bidder of any request(s) for disclosure within a period of five (5) years from date of award. Failure to so label such materials or failure to provide a timely response after notice of request for public disclosure has been given shall be deemed a waiver by the bidder of any claim that such materials are, in fact, so exempt.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

[AMENDATORY SECTION (Amending WSR 91-09-035, filed 4/12/91)]

WAC 236-48-124 ((Minor)) Informalities ((or irregularities)) in bids, ((or)) quotes, or proposals. The purchasing activity reserves the right to waive ((minor)) informalities ((or irregularities)) in bids, quotes or proposals ((as defined in WAC 236-48-003)).

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

[AMENDATORY SECTION (Amending WSR 91-09-035, filed 4/12/91)]

WAC 236-48-132 Notice of cancellation or rejection of bids. In the event of a cancellation of a competitive solicitation ((an invitation for bid or a request for quotation,)) or ((in the event)) if all bids are rejected, all bidders will be notified by mail, facsimile or electronic means by the purchasing activity.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

[AMENDATORY SECTION (Amending WSR 91-09-035, filed 4/12/91)]

WAC 236-48-141 Protests and appeals—Form and substance. Purchasing activities shall make available to bidders upon request a copy of their policy which outlines how the protest review process will be administered within their agency. All protests and appeals must be in writing, ((and)) signed by the protestant or appellant or an authorized agent and delivered within the timeframe(s) outlined by the protest policy. Protests must be addressed to that individual within the purchasing activity assigned review responsibilities. Such writing must state all facts and arguments on which the protestant or appellant is relying as the basis for its action. Such protestant or appellant shall also attach, or supply on demand by the ((director)) purchasing activity, any relevant exhibits related, or referred to in the ((writing)) protest. Copies of all protests, appeals, and exhibits shall be mailed, faxed or delivered by the protestant or appellant to the bidder or bidders against whom the protest is made at the same time such pro-

test, appeal, and exhibits are submitted to the purchasing activity.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

[AMENDATORY SECTION] (Amending Order 89-02, filed 8/22/89)]

WAC 236-48-142 Office of state procurement
((P))protest procedure prior to award. ((After a bid opening, and)) ((p))Prior to award, a bidder desiring to protest the bid of another bidder, the specifications or the manner in which the solicitation process has been conducted must ((send or deliver its protest)) notify the ((buyer)) state procurement officer in charge of the ((bid)) solicitation of his/her intent to file a protest as soon as possible after ((it)) he/she becomes aware of the reason(s) for the protest. ((If the protest is mailed the protestant shall immediately notify the buyer in charge of the bid by telephone, or some other means of instant communication, that a protest is being made.)) Such protest(s) must be received not later than five business days after notification has been given to the state procurement officer of bidder's intent to protest. Should the protest not be received within that timeframe, the state procurement officer may proceed with the award.

The ((buyer)) state procurement officer shall consider all of the facts available and issue a decision in writing within ten business days after receipt of the protest, unless more time is needed. The protestant and, where applicable, the bidder(s) against whom the protest is made will be notified if ((longer)) additional time is necessary. If the protesting bidder or the bidder against whom the protest is made is not satisfied with the decision of the ((buyer)) state procurement officer, he/she shall have the right to appeal to the director, office of state procurement. Such appeal must be received by the director within five business days after notification of the ((buyer's)) state procurement officer's decision. The director shall consider all of the facts available and issue a decision in writing within ten business days after receipt of the appeal, unless more time is needed. The appealing bidder will be notified if ((longer)) additional time is necessary.

Unless an emergency exists as determined by the director, award of the contract, if one is to be made, will be postponed until after the director has issued a decision. Unless the director subsequently considers it necessary to pursue further clarification(s), the decision of the director on the protest is final.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

[AMENDATORY SECTION] (Amending Order 89-02, filed 8/22/89)]

WAC 236-48-143 Office of state procurement
((P))protest procedure after award. Protests after award will not be considered unless the protest concerns a matter which arises after the award or could not reasonably have been known or discovered prior to award. Such protests shall be received by the director, office of state procurement not

later than five business days after ((mailing)) distribution of the award information by the office of state procurement. If the protest is mailed the protestant shall immediately notify by telephone, or some other means of instant communication, the ((buyer)) state procurement officer in charge of the bid and the bidder that has received the award that a protest is being made. The director shall consider all of the facts available and issue a decision on the protest within ten business days after receipt thereof, unless more time is needed. In such event, the protestant and the bidder that has received the award shall be notified of any delay. If the director upholds the award, the decision of the director is final, unless the director subsequently considers it necessary to pursue further clarifications.

If the director finds that the award should not have been made he/she shall notify the bidder which received the award of his/her intent to cancel the award and the reasons therefore. ((Such)) The bidder that has received the award shall then have five business days after receipt of notification in which to appeal the decision to cancel the award to the director of general administration. The director of general administration shall consider all of the facts available and issue a decision within ten business days after receipt of the appeal, unless more time is needed. If more time is needed, the appellant and the protestant shall be so notified.

If the director of general administration agrees that the award should be canceled he/she shall order the director of the office of state procurement to cancel the award ((within ten business days after the decision is delivered to the bidder to whom the contract had been awarded. All bids shall then be rejected and new bids solicited)). Unless the director of general administration subsequently considers it necessary to pursue further clarifications, the decision of the director of general administration shall be final.

If an award is cancelled, the director, office of state procurement, after consideration of all pertinent factors, may decide to reject all bids, quotes or proposals and solicit new bids, quotes or proposals. Barring such a decision, an award shall be made to the next lowest responsive and responsible bidder.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

[AMENDATORY SECTION] (Amending WSR 91-09-035, filed 4/12/91)]

WAC 236-48-152 Offset against contractor payments. In addition to other methods of collection available, the purchasing activity may offset any damages for which the contractor is responsible against payments owing to the contractor from any agency which may be indebted to the contractor.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

[AMENDATORY SECTION] (Amending WSR 91-09-035, filed 4/12/91)]

WAC 236-48-153 Delivery date. Whenever a specific delivery date has been ((stated)) stipulated by the purchasing activity in a solicitation document, that date shall be an essential condition of ((the)) any contract subsequently entered

into by the parties. If a contractor is unable to meet the delivery date, he/she shall notify the ((buyer)) purchasing activity at the earliest possible time. The contractor shall include in such notification the ((projected)) proposed revised delivery date. The purchaser shall then have the option to accept such revised dates, or cancel and purchase elsewhere. The purchasing activity shall have the option of pursuing liquidated damage provisions or other legal remedies outlined in the solicitation document, statute or regulation.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

[AMENDATORY SECTION (Amending WSR 91-09-035, filed 4/12/91)]

WAC 236-48-165 Change in product offered. After award, ((A bidder or)) a contractor shall not be allowed to substitute goods ((and)) or services from that offered: Provided, however, ((I)) if the goods or services offered are no longer available to the ((bidder or)) contractor for reasons beyond its control or if the short term needs of an agency are more fully met by the proposed substitute goods or services, the purchasing activity may consider a request by the bidder or contractor for substitution. All such requests must be in writing, must set forth the reasons the product or service is no longer available, and/or must be accompanied by samples, record of performance, certified copies of tests by impartial and recognized laboratories, ((and)) or such additional data as the purchaser may request. Samples and data shall be furnished sufficiently in advance to allow for investigation before a decision is made. The bidder or contractor shall warrant that the ((contracted)) substitute article is equal or better than the specified article. If the change results in any cost savings to the bidder or contractor, the cost savings shall be reflected in full in a reduction in price to the ((using agency)) purchasing activity. State contracts may only be ((so)) amended by the office of state procurement.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

[AMENDATORY SECTION (Amending WSR 91-09-035, filed 4/12/91)]

WAC 236-48-166 Contract extension. If contract provisions allow, a contractor and the purchasing activity may ((covenant and)) mutually agree ((that the)) to extend a contract ((in question may be extended)) for predetermined periods ((by the purchasing activity under the same terms and conditions as comprise)) pursuant to the terms and conditions included in the original contract.

((The buyer shall have discretion to extend a contract with the)) Justification for extension ((being)) must be fully documented in the contract file. The decision to pursue a contract extension shall include a review of price competitiveness, changes in the marketplace for such commodity or service, and/or other relevant factors. The contractor shall be notified in writing of the purchasing activities ((intent)) desire to pursue a contract extension ((extend)) prior to the ((termination)) expiration date of the ((existing or extended)) contract. ((If the contractor does not wish to have the contract extended, he/she shall so notify the purchasing activity in writing.)) Extensions, to be effective, must be in writing and

signed by authorized representatives of both the contractor and purchasing activity.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

[AMENDATORY SECTION (Amending WSR 91-09-035, filed 4/12/91)]

WAC 236-48-167 Additions or deletions to ((the)) contract or purchase order. ((Within reason)) Where consistent with statutory and contract provisions, the office of state procurement may increase or decrease the items, quantities, ((or)) delivery locations or agencies specified in a state contract or purchase order. Contract provisions shall specify the extent to which this option may be exercised. Where consistent with statute and contract provisions, purchasing activities may do likewise for purchases which they administer.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

[AMENDATORY SECTION (Amending WSR 94-22-056, filed 11/1/94)]

WAC 236-48-190 Surplus property disposal priorities. Excess and/or surplus property will be offered for sale, transfer, or donation as designated below and according to the following priorities:

(1) Sale or transfer to state agencies (including state universities and colleges);

(2) Sale or transfer to other tax-supported educational agencies;

(3) Sale or transfer to tax-supported agencies, municipalities or political subdivisions within the state of Washington;

(4) Sale or transfer to ((tax-exempt nonprofits)) public benefit nonprofit corporations;

(5) Donation of surplus, tangible personal property to qualified shelters as described in and in accordance with RCW 43.19.1920.

(6) Sale to the general public including by auction, sealed bid and negotiation; and

(7) Other action as needed, such as destruction where it has been determined that the item has no sale value.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

[AMENDATORY SECTION (Amending WSR 91-09-035, filed 4/12/91)]

WAC 236-48-230 Leases. ((If a purchasing activity leases without option to purchase goods or services, the state standard form lease developed by office of state procurement shall be used. Any deviations therefrom must be approved as to form by the office of state procurement and the attorney general's office.)) For goods to be leased with an option to purchase or lease-purchased, agencies are responsible for coordinating the finance agreement where applicable with the office of state treasurer prior to the purchasing activity conducting the purchase.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

[AMENDATORY SECTION (Amending Order 89-02, filed 8/22/89)]

WAC 236-48-250 Use of credit, charge cards or purchasing cards. All credit((/)), charge cards or purchasing cards, other than those for gasoline, vehicle rental, travel, and telephone, shall be ordered by the director of an agency or designee. It shall not be mandatory upon an agency to obtain credit ~~or~~ charge cards or purchasing cards.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

[AMENDATORY SECTION (Amending Order 89-02, filed 8/22/89)]

WAC 236-48-251 Distribution of credit(/), charge cards or purchasing cards. Agency heads (or their designees) shall institute a system for responsibility, control and distribution of credit(/), charge or purchasing cards within each agency. Control shall be so structured that, upon request of the office of state procurement, each agency will be able to report the number of cards used, the type of cards used, the amount of purchases made by card within a stated time together with any problems they have encountered.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

[AMENDATORY SECTION (Amending Order 89-02, filed 8/22/89)]

WAC 236-48-252 Credit limits. When an agency determines that the use of credit(/), charge or purchasing cards will be to its advantage, the source will be the existing state contract. The ((director)) office of state procurement will establish an aggregate credit limit for each agency. Each agency director will then establish a credit limit for each card ordered within that aggregate limit. Any requests for exception to the agency aggregate monetary limit must be made in writing by the agency head to the director, office of state procurement, who will approve or deny. Dollar limitations shall not apply to travel related expenditures such as food, lodging, airfare, and vehicle rental.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

[AMENDATORY SECTION (Amending Order 83-03, filed 8/26/83)]

WAC 236-48-253 Payments of credit or purchasing card bills. Statements received from the financial institution or firm issuing credit or purchasing cards shall be handled in the same manner as an invoice bearing a prompt payment discount. Payments shall be made in full each month to avoid late payment penalties or interest charges imposed by credit card issuers.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

[AMENDATORY SECTION (Amending Order 89-02, filed 8/22/89)]

WAC 236-49-001 Purpose. The purpose of this chapter is to ((set forth rules and regulations governing the relationship and procedures between the office of state procurement and state agencies.)) outline the purchasing structure within the state of Washington and to identify the responsibilities of, and relationships between, those purchasing activities. The requirements by which state agencies shall conduct their acquisitions are outlined in general authorities delegated by the office of state procurement and/or via policy outlined by higher educational facilities.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

[AMENDATORY SECTION (Amending WSR 91-09-034, filed 4/12/91)]

WAC 236-49-010 Definitions. As used in this chapter the following terms shall have the following meanings; additional terms shall have meanings as outlined under WAC 236-48-003:

((1) **Agency.** Shall include state of Washington institutions, colleges, community colleges and universities, the offices of the elective state officers, the supreme court, the court of appeals, the administrative and other departments of state government, and the offices of all appointive officers of the state. Agency does not include the legislature.

((2) **Alternate.** Goods and services which are not at least a functional equal in features, performance or use of the brand, model, or specification designated as the standard.

((3) **Delegated authority.** Authority to purchase goods and services delegated to an agency by office of state procurement pursuant to RCW 43.19.190(4) and which is delegated in three forms:

((a) **General.** Those purchases delegated annually by the office of state procurement which are common to multiple state agencies.

((b) **Specific.** Those purchases delegated annually to specific agencies for continuing individual commodity requirements.

((c) **Limited.** Those purchases delegated to a specific agency for one time commodity requirements.

((4) **Director.** Except where otherwise specifically noted shall mean the state purchasing and material control director, who is the assistant director of the office of state procurement.

((5) **Equal.** Goods and services which meet or exceed the quality, performance and use of the brand, model, or specifications in the invitation for bid or request for quotation.))

((6) **Field order.** A standard state form used to make withdrawals from existing state contracts established by the office of state procurement or where an agency has received delegated authority for direct purchase.))

((7) **Goods and/or services.** Material, supplies, services, and equipment offered for sale by a supplier(s) and required by a state agency to accomplish continuing and necessary functions and not otherwise statutorily exempted from chapter 43.19 RCW as a personal service under RCW 39.29.006(8); an architectural and engineering service under RCW 39.80.020(5); or data information systems and tele-

~~communications equipment, software, and services under chapter 43.105 RCW.))~~

((8)) (1) Materials management center. That activity managed by the department of general administration office of state procurement whose function is to provide for the:

(a) Centralized storage and distribution of commonly used supplies and equipment to ensure administrative efficiency and economy in such purchases by state agencies;

((b) Centralized salvage, maintenance, repair, and servicing of equipment, furniture, or furnishings used by state agencies.))

(b) Centralized storage of agency goods, backhaul of agency goods from remote locations to Olympia and management of the administration and distribution of the emergency food assistance program (TEFAP) funding and food commodities in accordance with federal regulations.

((9) Office of state procurement. The division of purchasing of the department of general administration in RCW 43.19.180 et seq. Whenever a purchase or sale is made by the office of state procurement on behalf of another agency the office of state procurement is acting in the capacity of agent for such agency.))

((10)) (2) Political subdivision. Any agency, political subdivision, or unit of local government of Washington state including, but not limited to, municipal corporations, quasi-municipal corporations, special purpose districts, and local service districts; any agency of Washington state government; any agency of the United States; any Indian tribe recognized as such by the federal government; and any political subdivision of another state of the United States.

(3) Public benefit non-profit corporation. An entity registered with the Office of Secretary of State as outlined by RCW 39.34.055 which maintains a tax exempt status under 26 U.S.C. Sec. 501(c)(3) with the Internal Revenue Service and which is receiving local, state or federal funds either directly or through a political subdivision.

((11) Purchase. Shall include purchase, lease, renting or lease purchase of goods and services.))

((12)) (4) Purchase order. A standard state form used by the office of state procurement and institutions of higher education and signed by an authorized ((buyer)) official of the ((office of state procurement)) purchasing activity which notifies the contractor to provide the stated material, equipment, supplies, or services under the terms and conditions set forth thereon or as outlined in the contract.

((13) Purchasing activity. The office of state procurement or an agency authorized by state statute to conduct acquisition of goods and services or delegated that authority by the office of state procurement.))

((14) Requisition. A standard state form which serves as a procurement request and which requests the office of state procurement to purchase stated requirements.))

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

[AMENDATORY SECTION (Amending WSR 91-09-034, filed 4/12/91)]

WAC 236-49-020 Washington state purchasing structure. The office of state procurement has been charged by the legislature with the responsibility to purchase all goods and/or services needed for the support, maintenance and use of all state institutions, colleges, community colleges and universities, the offices of the elective state officers, the supreme court, the court of appeals, the administrative and other departments of state government, and the offices of all appointive officers of the state. ((Primary authority for the purchase of specialized equipment, instructional and research material for their own use rests with the)) Colleges, community colleges and universities have statutory authority for conducting their own acquisitions but shall implement policies and procedures which adhere to statutory provisions and legislative intent outlined under applicable sections of chapter 43.19 RCW. ((Primary authority for the purchase of goods and/or services for resale to other than public agencies rests with the state agency concerned.)) The legislature has the responsibility of making purchases necessary for the operation of the legislature.

The office of state procurement has authority to delegate to state agencies other than institutions of higher education authorization to purchase or sell((,)) goods or services required by that agency ((which authorization shall specify types of goods and/or services:)) which agencies may purchase and shall identify guidelines by which those agencies shall conduct their acquisitions. ((Provided, That acceptance of the purchasing authorization by a state agency does not relieve such agency from conformance with RCW 43.19.190 through 43.19.1939, as now or hereafter amended, from chapter 236-48 WAC, or from policies established by the director after consultation with the state supply management advisory board. The delegation of such authorization to a state agency, including an educational institution, to purchase or sell material, equipment, services, and supplies shall not be granted, or otherwise continued under a previous authorization, if such agency is not in substantial compliance with overall state purchasing and material control policies, chapter 236-48 WAC or RCW 43.19.190 through 43.19.1939.)) Agencies receiving delegation of authority must remain in substantial compliance with procurement statutes, regulations and requirements outlined by the office of state procurement to obtain continued delegation of authority.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

[AMENDATORY SECTION (Amending WSR 94-21-017, filed 10/6/94)]

WAC 236-49-055 Preference for correctional industries Class II products. The following provisions outline ((indicate how the department of corrections and the depart-

~~ment of general administration will implement a purchasing program)) purchase requirements for correctional industries, Class II goods and services:~~

(1) Correctional industries will identify the goods and services available for purchase through the office of state procurement and confirm the same in writing to the director of the department of general administration at least one hundred twenty days before the expiration of any existing contract(s). The writing from correctional industries will include a request that the office of state procurement tender to correctional industries a mandatory use contract to sell these goods and services to state agencies, the legislature and departments in accordance with RCW 43.19.534. A mandatory use contract as defined in the procurement document will be executed between the office of state procurement and correctional industries that complies with state law and covers all specified Class II goods and services that are produced in whole, or in part, by correctional industries.

(2) All goods and services covered by the general administration mandatory use contract are to be purchased from correctional industries. General administration will administer these contracts.

(3) Any state agency, branch of the legislature or department may apply for an exemption from the correctional industries purchase preference by using the form developed by general administration. ((The exemption request shall be in the form of a written application presented to the director of general administration.

If the request for exemption is approved, that approval shall apply for the specified product or product line for a period of one year from the date of approval of the exemption. The approval shall apply to all customers of that agency requesting that product or product line. ((For an exemption to issue, there shall first be a contract executed between correctional industries and the department of general administration, and the following elements must be proven to the satisfaction of the director of general administration:

(a) ~~The goods or services provided by correctional industries do not meet the reasonable requirements of the applicant/agency, legislature or department;~~

(b) ~~The goods or services provided by correctional industries are not of equal or better quality than comparable goods or services available from the private marketplace; or~~

(c) ~~The correctional industries price for the goods or services is higher than that produced by the private sector.))~~

(4) However, goods or services produced by Class II correctional industries programs which primarily replace goods manufactured or services obtained from outside the state of Washington are not subject to the criteria contained in subsection (3) of this section, and shall be purchased solely from correctional industries.

(5) Correctional industries, Class II purchasing requirements supersede the second proviso of RCW 43.19.190(2), where correctional industries offers the goods or services through state contract and the goods are manufactured and/or services are obtained from outside the state of Washington.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

[AMENDATORY SECTION (Amending Order 89-02, filed 8/22/89)]

WAC 236-49-060 State purchasing cooperative ((purchasing)). ((Under the authority of chapter 39.34 RCW, political subdivisions may enter into an interlocal cooperative purchasing agreement with the office of state procurement. Participation is voluntary. A political subdivision may use state contracts and purchase orders when the office of state procurement provides therefore.))

The office of state procurement may establish a state purchasing cooperative composed of state agencies, political subdivisions and authorized private non-profit entities. The office of state procurement may also enter into agreements with other purchasing cooperatives outside the state as it deems appropriate. Authorized entities desiring to purchase goods or services from contracts or purchases administered by the office of state procurement shall first ensure current membership in the state purchasing cooperative. Participants may utilize state contracts, participate in procurement training activities sponsored by the office of state procurement and benefit from staff expertise and/or assistance in administering their own procurement programs. The office of state procurement shall fully recover costs of administering this program from members.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

WSR 99-11-086
EXPEDITED ADOPTION
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Management Services Administration)

[Filed May 19, 1999, 9:48 a.m.]

Title of Rule: WAC 388-08-410 Application of chapter 388-08 WAC, 388-08-413 Application for an adjudicative proceeding, 388-08-437 Filing and service of papers, 388-08-440 Vacating an order of dismissal for reason of default or withdrawal, 388-08-464 Petition for review—Response to petition—Disqualification of review judge, 388-08-470 Reconsideration, 388-08-515 Notice to limited-English-speaking parties, 388-08-555 Separate hearing regarding disclosure of investigative and intelligence files, and 388-08-575 Judicial review of final adjudicative order.

Purpose: To amend rules in chapter 388-08 WAC relating to adjudicative proceedings at the Department of Social and Health Services. The proposed rules only correct typographical errors, make address or name changes, clarify the rules without changing the effect of the rules; and implements legislative change for service of petition for judicial review.

Statutory Authority for Adoption: RCW 34.05.220 and 34.05.413.

Statute Being Implemented: RCW 34.05.220, 34.05.413, and 34.05.542.

Summary: To make housekeeping amendments to rules relating to adjudicative proceedings and for services of documents. It changes references from DSHS "office of appeals" to "board of appeals," updates addresses, clarifies language in the rules; and implements legislative changes for service of petition for judicial review.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Kristal Wiitala-Knutson, Board of Appeals, P.O. Box 45803, Olympia, WA 98504-5803, (360) 664-6058.

Name of Proponent: Department of Social and Health Services, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed rules only correct typographical errors, make address or name changes, clarify the rules without changing the effect of the rules; and implements legislative change for service of petition for judicial review.

The anticipated effect is these rules will be more easily understood and all correspondence will be addressed to the appropriate address.

Proposal Changes the Following Existing Rules: Amends WAC 388-08-410, 388-08-413, 388-08-437, 388-08-440, 388-08-464, 388-08-470, 388-08-515, 388-08-555, and 388-08-575. Amends rules by changing references from DSHS "office of appeals" to "board of appeals," updates addresses, clarifies language, and implements legislative change for service of petition for judicial review.

NOTICE

THIS RULE IS BEING PROPOSED TO BE ADOPTED USING AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS RULE BEING ADOPTED USING THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Paige Wall, Rules Coordinator, Department of Social and Health Services, P.O. Box 45850, Olympia, WA 98504-5850, AND RECEIVED BY July 19, 1999.

May 17, 1999

Marie Myerchin-Redifer, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending Order 2999, filed 2/5/90, effective 3/1/90)

WAC 388-08-410 Application of chapter 388-08

WAC. (1) **Scope.** This chapter applies to adjudicative proceedings begun on or after July 1, 1989, in programs administered by the department of social and health services (DSHS). The definition of the word "begun" is receipt of the application for an adjudication proceeding ((at the DSHS's office of appeals)) as provided in WAC 388-08-413(3). Proceedings begun before July 1, 1989, are governed by the pro-

cedural rules in effect on ((July)) June 30, 1989. Legal authority for adopting this chapter is RCW 34.05.220 (1)(a).

(2) **Conflict of rules.** If a provision in this chapter conflicts with a provision in the chapter containing the program's substantive rules, the provision in the chapter containing the program's substantive rules governs.

(3) **Presiding officer.** The presiding officer shall be either an administrative law judge (ALJ) from the office of administrative hearings or a review judge from the DSHS ((officer)) board of appeals. References to ALJ in this chapter apply to a review judge when a review judge is the presiding officer.

(4) **Reviewing officer.** The reviewing officer shall be the secretary or a review judge from the DSHS ((officer)) board of appeals.

(5) **Physical and mailing addresses((7):**

(a) ALJ administrative and field office addresses are listed under WAC 10-04-020. The mailing address for applications for adjudicative proceedings or requests for hearing in DSHS programs before the office of administrative hearings is: Office of Administrative Hearings, P.O. Box 2465, Olympia WA 98507-2465 or the address of the assigned field office.

(b) The ((officer)) DSHS board of appeals is located in the ((DSHS Headquarters, Office Building Number 2, Twelfth and Franklin, Olympia, and the mailing address is Office of Appeals, P.O. Box 2465, Olympia, WA 98504-2465)) Blake Office Park, 4500 -10th Avenue Southeast, Lacey, Washington and the mailing address is Board of Appeals, P.O. Box 45803, Olympia, WA 98504-4803.

AMENDATORY SECTION (Amending Order 2999, filed 2/5/90, effective 3/1/90)

WAC 388-08-413 Application for an adjudicative proceeding. (1) **Who may apply.** Any person or authorized representative may file an oral or written application for an adjudicative proceeding.

(2) **Form of application.** The application need not be in any particular form but should specify the decision being appealed and the reasons the appellant is dissatisfied with the decision.

(3) **Application.**

(a) An oral application shall be made to a responsible department or office of administrative hearings employee.

(b) A written application should be filed at the office of ((appeals)) administrative hearings at the address in WAC 388-08-410(5)(a). However, the application can be filed with any responsible department or office of administrative hearings employee.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending Order 2999, filed 2/5/90, effective 3/1/90)

WAC 388-08-437 Filing and service of papers. (1) Service required when filing. A party filing a pleading, brief, or other paper, except an application for an adjudicative proceeding, with the ((officer)) board of appeals or the office of

administrative ((law judge (ALJ))) hearings shall serve a copy of the paper upon:

- (a) Every other party; or
- (b) If the other party is represented or has an agent, the other party's representative or agent.

(2) Filing and service made by. Unless otherwise provided by law, filing and service shall be made by:

- (a) Personal service;
- (b) First class, registered, or certified mail;
- (c) Telegraph;
- (d) Electronic telefacsimile transmission and same-day mailing of copies; or
- (e) Commercial parcel delivery company.

(3) Filing complete. Filing with the ((department)) board of appeals shall be complete upon actual receipt during office hours at the ((officer)) board of appeals. Filing with the ((ALJ)) office of administrative hearings shall be complete upon actual receipt during office hours at ((the)) any field or administrative office ((of the ALJ)).

(4) Service complete. Service shall be complete when:

- (a) Personal service is made;
- (b) Mail is properly stamped and addressed and is deposited in the United States mail;
- (c) A properly addressed telegram is deposited with a telegraph company with charges prepaid;
- (d) An electronic telefacsimile transmission produces proof of transmission; or
- (e) A commercial parcel is delivered to the parcel delivery company with charges prepaid.

(5) Proof of service. Where proof of service is required by statute or rule, filing the papers with the ((department or ALJ)) board of appeals or the office of administrative hearings, together with one of the following, shall constitute proof of service:

- (a) An acknowledgement of service;
- (b) A certificate of service including the date the papers were served upon all parties and the signature of the serving party indicating service was completed ((by:
 - (i) Personal service;
 - (ii) Mailing a copy properly addressed with postage prepaid to each party to the proceeding, or the party's representative or authorized agent;
 - (iii) Telegraphing a copy properly addressed with charges prepaid to each party to the proceeding, or the party's representative or authorized agent;
 - (iv) Transmitting a copy by electronic telefacsimile device and, on the same day, mailing a copy to each party to the proceeding, or the party's representative or authorized agent; or
 - (v) Depositing a copy properly addressed with charges prepaid with a commercial parcel delivery company)) under subsection (4) of this section.

AMENDATORY SECTION (Amending Order 2999, filed 2/5/90, effective 3/1/90)

WAC 388-08-440 Vacating an order of dismissal for reason of default or withdrawal. (1) Right to request. The parties shall have the right to file a written request to vacate an order of dismissal for reason of default or withdrawal.

(2) Contents. The request shall state the grounds relied upon.

(3) Time limits.

(a) The period to file a request ((shall be)) is twenty-one days from the date the ((party serves)) administrative law judge (ALJ) serves the order of dismissal.

(b) The ((administrative law judge ())) ALJ(())) shall waive the twenty-one day limit for filing a request when a person:

(i) Files a request within thirty days of the date the order becomes final; and

(ii) Demonstrates good cause for failure to file a timely request. Good cause means one of the grounds enumerated in Court Rule 60 and includes:

(A) A person's mistake, inadvertence, or excusable neglect preventing the person from timely filing a request; or

(B) An unavoidable casualty or misfortune preventing the person from timely filing a request.

(4) Filing. The person shall file the request at the ((officer)) board of appeals or the office of administrative hearings.

(5) Grounds to vacate an order of dismissal. When, in the reasoned opinion of the ALJ, good cause to grant the relief is shown, the ALJ shall vacate the order of dismissal and reinstate the application.

AMENDATORY SECTION (Amending Order 2999, filed 2/5/90, effective 3/1/90)

WAC 388-08-464 Petition for review—Response to petition—Disqualification of review judge. (1) Initial orders that may become final orders.

(a) If a petition for review is not filed within twenty-one days from service of the initial order, the initial order shall, subject to the provisions of this section, become the final order.

(b) An initial order shall not become the final order after a food stamp administrative disqualification hearing. Each party shall have the right to file a petition for review of the administrative law judge's order. Whether a petition for review is or is not filed, the review judge shall enter the final order on behalf of the secretary.

(2) Who may petition. Each party has the right to file a petition for review of an order entered by an administrative law judge.

(3) Petition contents. The petition for review shall:

(a) Specify the portions of the order to which exception is taken; and

(b) Refer to the evidence of record relied upon to support the petition.

(4) Petition time limits.

(a) The period to timely file a petition for review is twenty-one days from the date the initial decision was served.

(b) A review judge shall extend the twenty-one-day period to file a petition for review upon request of a party when:

(i) The request is made during the twenty-one-day period; and

(ii) Good cause for the extension is shown.

(c) The review judge shall waive the twenty-one-day limit for filing a petition for review when a person:

(i) Files a petition for review within thirty days of the date the initial order becomes final; and

(ii) Demonstrates good cause for failure to file a timely petition. Good cause means one of the grounds enumerated in Court Rule 60 and includes:

(A) A petitioner's mistake, inadvertence, or excusable neglect preventing the petitioner from timely filing a petition; or

(B) An unavoidable casualty or misfortune preventing the petitioner from timely filing a petition for review.

(5) Petition filing and service. The petition for review shall be in writing and filed with the ((~~officer~~)) board of appeals at the address in WAC 388-08-410 (5)(b). The petitioning party is encouraged to serve a copy of the petition upon the other party or the other party's representative at the time the petition is filed. The ((~~officer~~)) board of appeals shall serve a copy on the other party or representative.

(6) Notice of petition. When a petition for review is filed, the ((~~officer~~)) board of appeals shall send a copy of the petition to the nonpetitioning party ((or)) and, if represented, to the representative with a notice of the right to file a response.

(7) Response time limit, filing, service.

(a) The nonpetitioning party shall file any response with the ((~~officer~~)) board of appeals within seven days of the date ((~~that office served~~)) of service of a copy of the petition on the nonpetitioning party or representative.

(b) The nonpetitioning party shall serve a copy of the response on the petitioner and any other party or, if represented, on the representative at the time the response is filed.

(c) A review judge may extend the period to file a response upon request of a party showing good cause.

(d) A review judge may, in the review judge's discretion, accept a late filed response and consider the response when ruling on a petition for review.

(8) Disqualification. The ((~~chief review judge~~)) board of appeals shall disclose the name of the review judge assigned to rule on a petition to any party or representative making inquiry. An individual petitioning to disqualify a review judge under RCW 34.05.425 shall file the petition with the review judge assigned to the proceeding.

AMENDATORY SECTION (Amending Order 2999, filed 2/5/90, effective 3/1/90)

WAC 388-08-470 Reconsideration. Within ten days of service of a review order, any party may file a petition for reconsideration. A review judge shall extend the period to file a petition upon request of a party made during the ten-day filing period when good cause for the extension is shown. The petition shall state the specific grounds upon which relief is requested. A petition for reconsideration shall be filed at the ((~~officer~~)) board of appeals at the address in WAC 388-08-410 (5)(b).

AMENDATORY SECTION (Amending Order 2999, filed 2/5/90, effective 3/1/90)

WAC 388-08-515 Notice to limited-English-speaking parties. This section applies when the ((~~officer~~)) board of appeals or the office of administrative ((law judge)) hearings is notified or otherwise made aware that a limited-English-speaking person is a party in an adjudicative proceeding. All notices concerning the proceedings, including notices of hearing, continuance, and dismissal shall:

(1) Be written in the primary language of the party; or

(2) Include a notice in the primary language of the party describing:

(a) The significance of the notice; and

(b) How the party may receive assistance in understanding the notice and, if necessary, responding to the notice.

AMENDATORY SECTION (Amending Order 2999, filed 2/5/90, effective 3/1/90)

WAC 388-08-555 Separate hearing regarding disclosure of investigative and intelligence files. (1) Applicability and request to ((~~officer of special~~)) the division of fraud investigation ((OSI)) DFI. When the appellant seeks disclosure of a record maintained by the OSI subject to the exemption under WAC 388-320-220, the following process shall determine whether, on a case-by-case basis, disclosure shall be ordered:

(a) The appellant or the appellant's representative shall file a written request with the office of ((~~appeals or the~~)) administrative ((law judge (ALJ), if one is appointed)) hearings, no later than fourteen days before the hearing;

(b) The request shall identify the record sought;

(c) The request shall state the reasons why the appellant believes disclosure is necessary;

(d) The request shall identify the local community service office or the ((OSI)) DFI field office where the appellant wishes to review the record;

(e) The office of ((~~appeals or ALJ~~)) administrative hearings shall forward a request copy to the ((OSI at the main)) DFI at its headquarters office ((of special investigation)) in Olympia; and

(f) Upon the appellant's showing of good cause, the ALJ may shorten the fourteen-day notice period.

(2) ((OSI)) DFI action.

(a) Within ten days of receipt of a properly filed request, the ((OSI)) DFI shall determine whether the record sought is within an exemption to disclosure.

(b) Any exempt record shall be:

(i) Sealed in an envelope clearly designated as an exempt or confidential record of the ((OSI)) DFI;

(ii) Placed in the ((OSI)) DFI file;

(c) The ((OSI)) DFI shall then notify the appellant or representative, in writing, of the:

(i) ((OSI's)) DFI's action; and

(ii) Appellant's or representative's right to a disclosure hearing.

(iii) If any information is placed in a sealed envelope and excluded from disclosure, the notice shall state the specific exemption relied upon for this action. The notice shall pro-

vide the appellant a ten-day opportunity to inspect the ((OSI)) DFI file by the person, or the person's representative, at the community service office or ((OSI)) DFI field office designated by the appellant. In no event shall the investigative file leave the physical control of the designated ((OSI)) DFI records custodian, provided the appellant may copy all documents not sealed in an envelope designated as exempt or confidential.

(d) If no amended disclosure request under subsection (3) of this section is filed, the issue of disclosure shall be regarded as moot.

(3) ALJ action. If the appellant wants further disclosure, the appellant shall file an amended disclosure request with the ALJ. The ALJ shall schedule a separate, *in camera* hearing to determine whether, and to what extent, to allow the disclosure of an exempted record.

(a) The department shall have the burden of proving, by a preponderance of the credible evidence, whether the necessity to protect an exempt record or confidential information clearly outweighs the disclosure interests.

(b) Either party may offer witnesses to testify on the disclosure issue. When the appellant calls witnesses from the state, investigative, law enforcement, or penology agencies as adverse witnesses, the appellant may ask leading questions.

(c) Attendance shall be limited to the parties, the parties' representatives, the ALJ, and any witnesses to be called provided, upon the request of either party or upon the ALJ's own motion, the ALJ may exclude non-testifying witnesses from the hearing.

(d) In determining whether to disclose information to the appellant, the ALJ shall review the information, but shall not disclose the information to the appellant.

(e) The ALJ shall enter an initial order.

(i) If the information sought is pertinent to any ongoing criminal investigation, disclosure shall only be ordered by a superior court of this state.

(ii) The ALJ shall order nondisclosure of specific information consistent with law after making findings of fact showing:

(A) The information sought to be disclosed is inadmissible and immaterial to establishing a defense; or

(B) Specific investigative or intelligence information, which cannot be deleted from any specific records sought, is clearly necessary to protect any vital governmental function, ongoing criminal investigation, or an individual's right of privacy; or

(C) After weighing the public interest in protecting the flow of information against the individual's right to prepare the individual's defense, the evidence demonstrates it is not necessary to disclose particular intelligence or investigative information.

(iii) An order for disclosure shall state the times and methods for record inspection. In no event shall such order compel the release of an original record but, rather, where release is ordered, copies shall be provided. Copying a record shall be governed by WAC 388-320-140.

(f) Each party has the right to file a petition for review (for) of the initial order under WAC 388-08-464. There

shall be no disclosure under an initial order until exhausting all review proceedings.

(4) Assignment of new ALJ. When the ALJ conducts the *in camera* review under subsection (3) of this section and determines information should not be disclosed to the appellant, the chief ALJ or the chief ALJ's designee shall assign another ALJ to preside over the adjudicative proceeding.

AMENDATORY SECTION (Amending Order 2999, filed 2/5/90, effective 3/1/90)

WAC 388-08-575 Judicial review of final adjudicative order. (1) Right to judicial review; exclusive remedy. An appellant or intervener aggrieved, as described under RCW 34.05.530, by the final decision or order in a department of social and health services (DSHS) adjudicative proceeding may appeal the decision or order to court. Judicial review shall only be obtained under chapter 34.05 RCW. Judicial review may not be obtained through any other procedure.

(a) Chapter 34.05 RCW contains the pertinent provisions of the law.

(b) RCW 74.08.080(3) contains additional provisions about public assistance proceedings.

(2) Instituting judicial review; filing and serving the petition. As described in RCW 34.05.542(2), within thirty days after the department mails the final decision, the petitioner shall file the petition for judicial review with the court and serve a copy of the petition on DSHS, the office of the attorney general, and all parties of record.

(a) A petition shall be filed in the Superior Court at the petitioner's option for:

(i) Thurston County;

(ii) The county of the petitioner's residence or principal place of business; or

(iii) Any county where property affected by the decision is located.

(b) ((Servicee)) Delivery of a copy of the petition for judicial review on DSHS under RCW 34.05.542(4) may be ((had)) made by ((personally)) serving a copy of the petition on the ((officer)) secretary or on the board of appeals by personal service or mail that provides proof of receipt. If there is an attorney of record for DSHS, service on the agency may be made by mailing a copy of the petition, postage prepaid, to the attorney of record.

(c) Service of a copy of the petition for judicial review on the office of the attorney general may be ((had)) made by mailing a copy of the petition, postage prepaid, to the attorney of record or to the Office of the Attorney General, (Highway Licenses Building, PB 71) P.O. Box 40124, Olympia, WA 98504-0124.

(d) Service of a copy of the petition for judicial review on other parties of record may be ((had)) made by mailing a copy of the petition to the other parties, properly addressed and postage prepaid.

WSR 99-11-090**EXPEDITED ADOPTION****EMPLOYMENT SECURITY DEPARTMENT**

[Filed May 19, 1999, 10:32 a.m.]

Title of Rule: Delinquent predecessor taxes.

Purpose: To provide a method for a successor employer to pay the delinquent taxes of a predecessor employer in order to possibly obtain a lower tax rate.

Statutory Authority for Adoption: Chapters 34.05 and 50.12 RCW.

Statute Being Implemented: Portion of RCW 50.29.062.

Summary: To revise the rule to promote clarity and delete archaic language. This rule is being rewritten and renumbered in accordance with legislative mandates that require removal of rules that are difficult to understand.

Reasons Supporting Proposal: This rule is being amended in compliance with Governor Locke's Executive Order 97-02.

Name of Agency Personnel Responsible for Drafting: George Mante, 212 Maple Park, Olympia, WA, (360) 902-9642; **Implementation and Enforcement:** Dale Ziegler, 212 Maple Park, Olympia, WA, (360) 902-9303.

Name of Proponent: Employment Security Department, UI Tax Administration, UI Division, P.O. Box 9046, Olympia, WA 98507, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: This rule has not been changed from the original rule other than to clarify archaic language and to comply with Governor Locke's Executive Order 97-02. This rule should read better to the general public. The rule explains the process by which a successor employer, as defined in WAC 192-300-050, may request and pay the department back taxes in order to receive a lower tax rate if the predecessor employer was delinquent in paying unemployment insurance taxes.

Proposal Changes the Following Existing Rules: The existing rule is repealed. The new rule is being renumbered in accordance with Executive Order 97-02 and the department's new easier system for identifying rules for all users. There is no substantive change to the previous rule.

NOTICE

THIS RULE IS BEING PROPOSED TO BE ADOPTED USING AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS RULE BEING ADOPTED USING THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO George Mante, Employment Security Department, UI Tax Administration, P.O. Box 9046, Olympia, WA 98507-9046, AND RECEIVED BY July 21, 1999.

May 13, 1999
Carver Gayton
Commissioner

NEW SECTION**WAC 192-320-060 Delinquent predecessor taxes.**

RCW 50.29.062 provides that a successor employer, as defined in WAC 192-300-050 will be assigned the tax rate of the predecessor employer. If the successor employer has been assigned the maximum tax rate due to late, or nonpayment of, taxes to the department by the predecessor employer; they may receive a lower rate upon completion of the following:

- a. submit a written request to the department; and
- b. payment of delinquent tax payments by the cut-off date of September 30th.

The successor employer will receive the tax rate of the predecessor employer as if the taxes had been paid timely. The successor will keep this rate until eligible under experience rating statutes for a different rate.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 192-12-076

Delinquent predecessor taxes.

WSR 99-11-091**EXPEDITED ADOPTION****EMPLOYMENT SECURITY DEPARTMENT**

[Filed May 19, 1999, 10:33 a.m.]

Title of Rule: Predecessor-successor transfers through intermediaries.

Purpose: To spell out the transfer of operating assets from one employer to another when an intermediary is used and to set forth the criteria for determining if a predecessor-successor relationship exists.

Statutory Authority for Adoption: Chapters 34.05 and 50.12 RCW.

Statute Being Implemented: Portions of RCW 50.04.320 and 50.29.062.

Summary: To revise the rule to promote clarity and delete archaic language. This rule is being rewritten and renumbered in accordance with recent mandates from the legislature and Governor's Office to remove sections of rules that are difficult to understand and clarify the intent of the rule.

Reasons Supporting Proposal: This rule is being amended in compliance with Governor Locke's Executive Order 97-02.

Name of Agency Personnel Responsible for Drafting: George Mante, 212 Maple Park, Olympia, WA, (360) 902-9642; **Implementation and Enforcement:** Dale Ziegler, 212 Maple Park, Olympia, WA, (360) 903-9303 [902-9303].

Name of Proponent: Employment Security Department, UI Division, UI Tax Administration, P.O. Box 9046, Olympia, WA 98507, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: This rule has not been changed from the original rule other than to clarify archaic language and to comply with Governor Locke's Executive Order 97-02. This rule should read better to the general public. It should also clarify how the department determines a predecessor-successor relationship when operating assets are transferred from one employer to another by an intermediary.

Proposal Changes the Following Existing Rules: The existing rule is repealed. The new rule is being renumbered in accordance with Executive Order 97-02 and the department's new easier system for identifying rules for all users. There is no substantive change to the previous rule.

NOTICE

THIS RULE IS BEING PROPOSED TO BE ADOPTED USING AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS RULE BEING ADOPTED USING THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO George Mante, Employment Security Department, UI Tax Administration, P.O. Box 9046, Olympia, WA 98507-9046, AND RECEIVED BY July 21, 1999.

May 13, 1999
Carver Gayton
Commissioner

NEW SECTION

WAC 192-320-055 Predecessor-successor transfers through intermediaries. When operating assets are transferred from one employer to another by the use of an intermediary, whose function is to arrange, or facilitate, the transfer process (RCW 50.04.320 and 50.29.062) – the existence of a predecessor-successor relationship will be determined on a case-by-case basis by the department. The fact that an intermediary was used does not preclude the existence of a predecessor-successor relationship.

In determining if a predecessor-successor relationship exists, the department will consider the:

- a. intent of the parties involved; and
- b. economic reality of the transactions, as opposed to the strict legal format of the multiple transfers.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 192-12-074

Predecessor-successor transfer through intermediaries.

WSR 99-11-092

EXPEDITED ADOPTION

EMPLOYMENT SECURITY DEPARTMENT

[Filed May 19, 1999, 10:34 a.m.]

Title of Rule: Employer reports—Failure to report hours.

Purpose: To show the process the department follows to calculate a claimant's hours on an unemployment insurance claim if an employer fails to report the hours worked.

Statutory Authority for Adoption: Chapters 34.05 and 50.12 RCW.

Statute Being Implemented: Portion of RCW 49.46.020.

Summary: To revise the rule to promote clarity and delete archaic language. This rule is being rewritten and renumbered to remove sections of rules that are difficult to understand.

Reasons Supporting Proposal: This rule is being amended in compliance with Governor Locke's Executive Order 97-02.

Name of Agency Personnel Responsible for Drafting: George Mante, 212 Maple Park, Olympia, WA, (360) 902-9642; **Implementation and Enforcement:** Dale Ziegler, 212 Maple Park, Olympia, WA, (360) 902-9303.

Name of Proponent: Employment Security Department, UI Division, UI Tax Administration, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: This rule has not been changed from the original rule other than to clarify archaic language and to comply with Governor Locke's Executive Order 97-02. This rule should read better to the general public. The rule describes what occurs should an employer fail to report hours for an employee and the manner in which the department processes any claim as a result of said failure.

Proposal Changes the Following Existing Rules: The existing rule is repealed. The new rule is being renumbered and rewritten in accordance with Executive Order 97-02 and the department's new easier system for identifying rules for all users. There is no substantive change to the previous rule.

NOTICE

THIS RULE IS BEING PROPOSED TO BE ADOPTED USING AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS RULE BEING ADOPTED USING THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO George Mante, Employment Security Department, Unemployment Insurance Division, UI Tax Administration, P.O. Box 9046, Olympia, WA 98507-9046, AND RECEIVED BY July 21, 1999.

May 13, 1999

Carver Gayton
Commissioner

NEW SECTION

WAC 192-310-035 Employer reports—Failure to report hours. (1) If an employer fails to report hours worked and a former employee files for benefits, the benefits will be based on the amount of hours calculated by using the state's minimum wage (RCW 49.46.020) in effect at the time.

(2) If the employer subsequently produces the actual hours worked, the employee's claim may be determined.

(3) In the event the claim is determined invalid, the original claim amount will not be considered as an overpayment against the claimant.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 192-16-001

Employer reports—Failure to report hours.

WSR 99-11-093
EXPEDITED ADOPTION
EMPLOYMENT SECURITY DEPARTMENT

[Filed May 19, 1999, 10:35 a.m.]

Title of Rule: Employer reports—Further defining hours worked—RCW 50.12.070.

Purpose: To define those types of hours that should be reported on the employer's quarterly tax and wage report, i.e. vacation, sick leave, overtime et. al.

Statutory Authority for Adoption: Chapters 34.05 and 50.12 RCW.

Statute Being Implemented: Portion of RCW 50.12.070 and 50.04.330(1).

Summary: To revise the rule to promote clarity and delete archaic language. This rule is being rewritten and renumbered to remove sections of rules that are difficult to understand and to clarify the intent of the rule.

Reasons Supporting Proposal: This rule is being amended in compliance with Governor Locke's Executive Order 97-02.

Name of Agency Personnel Responsible for Drafting: George Mante, 212 Maple Park, Olympia, WA, (360) 902-9642; **Implementation and Enforcement:** Dale Ziegler, 212 Maple Park, Olympia, WA, (360) 902-9303.

Name of Proponent: Employment Security Department, UI Division, UI Tax Administration, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: This rule has not been changed from the original rule other than to clarify archaic language and to comply with Governor Locke's Executive Order 97-02. This rule should read better to the general public. The rule defines hours that should be included on the employer's quarterly tax and wage report such as vacation pay, sick leave pay, overtime, commissioned employees, wages in lieu of notice, employees on

salary, faculty employees, payment in kind, bonuses, tips and other gratuities; and fractions of hours.

Proposal Changes the Following Existing Rules: The existing rule is repealed. The new rule is being renumbered and rewritten in accordance with Executive Order 97-02 and the department's new easier system for identifying rules for all users. There is no substantive change to the previous rule.

NOTICE

THIS RULE IS BEING PROPOSED TO BE ADOPTED USING AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS RULE BEING ADOPTED USING THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO George Mante, Employment Security Department, UI Division, UI Tax Administration, P.O. Box 9046, Olympia, WA 98507-9046, AND RECEIVED BY July 21, 1999.

May 13, 1999

Carver Gayton
CommissionerNEW SECTION

WAC 192-310-040 Employer reports—Further defining hours worked—RCW 50.12.070. This section defines the hours that should be included on the employer's quarterly tax and wage report.

(1) **Vacation pay.** The employer will report the number of hours and employee is on leave with pay. Cash payments made in place of vacation time will not be counted as hours worked.

(2) **Sick leave pay.** In accordance with RCW 50.04.330(1), any amount of payments made to the employee covered under a qualified plan regarding sickness or accident disability, insurance or annuities, medical or hospitalization expenses in connection with sickness or accident disability, death or retirement are not considered to be wages or compensation. Neither hours nor wages are reportable. Under a nonqualified plan, the wages and hours are reportable.

(3) **Overtime.** The employer will report the number of hours actually worked for which overtime pay or compensatory time is provided, without regard to the amount of wages or compensation paid.

(4) **Commissioned employees.** An employer will report the actual number of hours worked by employees paid by commission. In the absence of reliable time keeping records, the employer will report a full-time commissioned employee for 40 hours worked for each week in which any of their duties were performed.

(5) **Wages in lieu of notice.** When an employee is paid wages in lieu of notice, the employer will report the actual number of hours that would have been for which they were compensated. Wages in lieu of notice compensates the

employee upon termination of service for the amount of wages they would have earned during the specified period.

(6) **Employees on salary.** If a salaried employee works other than the regular 40-hour week, the employer will report the actual number of hours worked. In the absence of a reliable time keeping record, the employer will report a full-time salaried employee for 40 hours each week they worked.

(7) **Faculty employees.** Faculty members of community and technical colleges must teach at least 15 classroom or laboratory hours to be considered full-time. A teaching load of less than 15 hours of instruction is considered part-time.

(i) In the absence of reliable hourly information, an employer will report the hours of instruction as part-time using 35 hours as the base per week using the following computation. For example, an instructor teaches 12 hours per week. 12 hours divided by 15 hours equals 80%. 35 hours times 80% equals 28 hours. The employer will report the 28 hours to the department on the employer's quarterly tax and wage report.

(ii) Any part-time salaried instructor who does not establish a valid claim because of this formula, may provide the department with documentation of hours worked which exceeds the reported hours by the employer.

(8) **Severance pay.** Employers will not report additional hours worked for severance pay. Severance pay is based on past service and compensates the employee upon job separation.

(9) **Payment in kind.** The employer will report the actual hours worked for performing services, which are compensated only by payment in kind.

(10) **Bonuses, tips and other gratuities.** An employer will not report additional hours for bonuses, tips or other gratuities if they are received performing regular hours if bonuses, tips and gratuities are the only sources of their compensation.

(11) **Fractions of hours.** If the employee's total number of hours for the quarter results in a fraction amount, the total figure will be rounded to the next higher number.

WSR 99-11-094

EXPEDITED ADOPTION

EMPLOYMENT SECURITY DEPARTMENT

[Filed May 19, 1999, 10:36 a.m.]

Title of Rule: Employer election to cover individuals—Interstate reciprocal coverage agreement.

Purpose: To set forth the procedures and process by which a multi-state employer may elect coverage for unemployment insurance purposes for its' workers from a single state.

Statutory Authority for Adoption: Chapters 34.05 and 50.12 RCW.

Statute Being Implemented: RCW 50.12.060.

Summary: This rule is being revised to promote clarity and delete archaic language. This rule is being renumbered and rewritten in accordance with recent mandates from the state legislature and the Governor's Office to remove sections

of rules that are difficult to understand and clarify the intent of the rule.

Reasons Supporting Proposal: This rule is being amended in compliance with Governor Locke's Executive Order 97-02.

Name of Agency Personnel Responsible for Drafting: George Mante, 212 Maple Park, Olympia, WA, (360) 902-9642; **Implementation and Enforcement:** Dale Ziegler, 212 Maple Park, Olympia, WA, (360) 902-9303.

Name of Proponent: Employment Security Department, UI Tax Administration, UI Division, P.O. Box 9046, Olympia, WA 98507-9046, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: This rule has not been changed from the original rule other than to clarify archaic language and to comply with the Governor's Executive Order 97-02. This rule should read better to the general public. The rule describes the process where an employer who operates in more than one state can file an election for coverage of employees in a single state (or other jurisdiction).

Proposal Changes the Following Existing Rules: The existing rule is repealed. The new rule is being renumbered and rewritten in accordance with Executive Order 97-02 and the department's new easier system for identifying rules for all users. There is no substantive change to the previous rule.

NOTICE

THIS RULE IS BEING PROPOSED TO BE ADOPTED USING AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS RULE BEING ADOPTED USING THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO George Mante, Employment Security Department, UI Tax Administration, P.O. Box 9046, Olympia, WA 98507-9046, AND RECEIVED BY July 21, 1999.

May 13, 1999

Carver Gayton
Commissioner

NEW SECTION

WAC 192-300-150 Employer election to cover individuals—Interstate reciprocal coverage agreement. The commissioner may enter into interstate reciprocal coverage agreements with other states for the purpose of covering services performed by a person for a single employer where the services were performed in more than one state (RCW 50.12.060). These services are to be considered performed entirely in one state where:

- a. any part of the person's service is performed;
- b. the person has a residence; or
- c. the employer keeps a place of business.

(1) Election Process

(a) **Filing.** An employer for whom personal services are performed, may file an election for coverage under the laws of a single state, for individuals who normally perform services in more than one state (or other jurisdiction) using a Form RC-1 "Employer's Election to Cover Multi-State Workers". Our department also requires that any employee to be covered sign the Form RC-2A "Notice to and Acquiescence of Employee as to Unemployment Compensation Coverage" which must accompany the Form RC-1.

(b) **Approval.** The agency of the elected state approves or disapproves the election.

If the agency approves the election, it forwards a copy of the election to any other participating states where the individual(s) might be covered by unemployment compensation law. Each participating state approves/disapproves the election as quickly as possible and notifies the appropriate agency of the elected state. If disapproved, the disapproving state notifies the elected state of its action and reason (s) for disapproval.

(c) **Withdrawal of Election.** If an election is not approved, the employer may withdraw its election within ten (10) days of notification.

(d) **Effective Date of Election.** An approved election is effective at the beginning of the calendar quarter when the election was submitted.

(e) **Termination of Election.** A request for election will be automatically terminated if an employee ceases to perform work in more than one state. This termination would take place at the end of the calendar quarter when the change was discovered.

2. Reports/notices to employees by employer or electing unit.

(a) The employer notifies each person affected of any approved election and sends the elected agency a copy of such notice.

(b) If a person covered by this election becomes unemployed, the employer, or electing unit will notify him/her as to which state covers any unemployment insurance claim.

(c) If an election ceases to apply to an individual, the employer will notify the affected individual in writing.

3. Other Jurisdictions.

The commissioner may also enter into such reciprocal coverage agreements with the federal government, or foreign governments.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 192-12-090

Employer election to cover individuals—Interstate reciprocal coverage agreement.

WSR 99-11-097**EXPEDITED ADOPTION****DEPARTMENT OF FISH AND WILDLIFE**

[Filed May 19, 1999, 10:52 a.m.]

Title of Rule: Commercial fishing rules.

Purpose: Amend Puget Sound net rules for 1999 salmon season.

Statutory Authority for Adoption: RCW 75.08.080.

Statute Being Implemented: RCW 75.08.080.

Summary: Sets 1999 Puget Sound salmon seasons.

Reasons Supporting Proposal: The salmon seasons are based on stock abundance projections and expected capture rates. Limitations are needed to protect stocks of concern, particularly chinook and coho. These rules are needed to allow commercial harvest while ensuring brood stock survival.

Name of Agency Personnel Responsible for Drafting: Evan Jacoby, 1111 Washington Street, Olympia, (360) 902-2930; **Implementation:** Bruce Crawford, 1111 Washington Street, Olympia, (360) 902-2325; and **Enforcement:** Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2927.

Name of Proponent: Washington State Department of Fish and Wildlife, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 220-47-302, deletes contrasting cork requirement, simplifies corkage. WAC 220-47-304, sets 1999 species seasons and eliminates unnecessary WAC section. WAC 220-47-307, clarifies closures in east San Juan Islands; WAC 220-47-311, sets purse seine season. WAC 220-47-325, requires brailing of salmon in purse seine fishery to reduce impact on nontargeted stocks. WAC 220-47-401, sets reef net season. WAC 220-47-410, editing change only. WAC 220-47-411, sets gill net season. WAC 220-47-427, reduces participation requirement. WAC 220-47-428, sets beach seine season. WAC 220-47-430, establishes log book requirement in Fraser River sockeye and pink species season in order to ascertain by-catch.

Proposal Changes the Following Existing Rules: Seasons and closed areas.

NOTICE

THIS RULE IS BEING PROPOSED TO BE ADOPTED USING AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS RULE BEING ADOPTED USING THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Evan Jacoby, Rules Coordinator, Washington State Fish and Wildlife, 600 Capitol

Way North, Olympia, WA 98501-1091, AND RECEIVED
BY July 17, 1999.

May 19, 1999
Evan Jacoby
Rules Coordinator

AMENDATORY SECTION (Amending Order 97-124, filed 7/29/97, effective 8/29/97)

WAC 220-47-302 Puget Sound—Lawful gear—Gill net. (1) Lawful drift gill net salmon gear in Puget Sound shall not exceed 1,800 feet in length nor contain meshes of a size less than 5 inches.

(2) Lawful skiff gill net salmon nets in Puget Sound shall not exceed 300 feet in length and 90 meshes in depth nor contain meshes of a size less than 5 inches. Nets must be retrieved by hand (no hydraulics may be used). Nets must be attended by the fisher at all times.

(3) Drift gill nets and skiff gill nets shall be operated substantially in a straight line. Circle setting or setting other than substantially in a straight line shall be unlawful.

(4) ~~((All gill net gear used in Puget Sound must have floats or corks of a contrasting color attached in 50-foot intervals along the corkline.~~

(5)) It shall be unlawful to take or fish for salmon with gill net gear beginning in 1998 in Areas 7 or 7A sockeye or pink fisheries unless said gill net gear is constructed so that the first 20 meshes below the corkline are composed of five-inch mesh white opaque minimum 210d/30 (#12) diameter nylon twine.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-47-304 Puget Sound—All citizen salmon species seasons and gill net mesh sizes. ~~((The following are Puget Sound all citizens salmon species seasons listed by area and species:~~

AREA	SPECIES	DATE	-	RANGE
6D:	COHO	9/20	-	10/24
7,7A:	FRASER SOCKEYE	6/21	-	9/26
	CHUM	9/27	-	11/14
7B:	CHINOOK	8/9	-	9/5
	COHO	9/6	-	10/24
	CHUM	10/25	-	12/12
7C:	CHINOOK	8/9	-	10/10
8:	CHUM	10/25	-	11/28
8A:	CHUM	10/18	-	11/28
8D:	COHO	9/20	-	11/7
	CHUM	11/8	-	12/19
9A:	COHO	9/13	-	10/31
10, 11:	COHO	9/6	-	10/10
	CHUM	10/11	-	11/28
12:	COHO	9/26	-	10/16
	CHUM	10/17	-	11/20
12A:	COHO	8/29	-	10/16
12B:	COHO	10/13	-	10/16
	CHUM	10/17	-	11/20
12C:	CHUM	10/31	-	11/27

(1) The following are the 1999 Puget Sound all citizens salmon species seasons listed by area and species:

AREA	SPECIES	DATE	-	RANGE
6D:	<u>COHO</u> <u>FRASER SOCKEYE</u> <u>AND PINK</u> <u>CHUM</u>	9/19	-	10/23
7,7A:	<u>FRASER SOCKEYE</u> <u>AND PINK CHUM</u>	6/26	-	9/25
		9/26	-	11/13
7B:	<u>CHINOOK</u> <u>COHO</u> <u>CHUM</u>	6/26	-	9/25
		9/26	-	11/13
7C:	<u>CHINOOK</u>	8/8	-	9/4
8:	<u>PINK</u> <u>COHO</u> <u>CHUM</u>	9/5	-	10/23
		10/24	-	12/11
8A:	<u>PINK</u> <u>COHO</u> <u>CHUM</u>	8/8	-	9/11
		9/5	-	10/16
8D:	<u>COHO</u> <u>CHUM</u>	9/19	-	11/6
		11/7	-	12/18
9A:	<u>COHO</u>	9/19	-	10/30
10, 11:	<u>COHO</u> <u>CHUM</u>	9/5	-	10/9
		10/10	-	11/27
12:	<u>COHO</u> <u>CHUM</u>	9/26	-	10/16
		10/17	-	11/20
12A:	<u>COHO</u>	8/29	-	10/16
12B:	<u>COHO</u> <u>CHUM</u>	10/13	-	10/16
		10/17	-	11/20
12C:	<u>CHUM</u>	10/31	-	11/27

(2) It is unlawful to fish for or possess salmon taken with gill net gear using mesh other than the mesh listed below for the species seasons set out in this section:

<u>CHINOOK SEASON</u>	<u>7 INCH MINIMUM MESH</u>
<u>COHO SEASON</u>	<u>5 INCH MINIMUM MESH</u>
<u>PINK SEASON</u>	<u>5 INCH MINIMUM MESH</u>
	<u>5-1/2 INCH MAXIMUM MESH</u>
	<u>AND IN SMCRA 8 - 60 MESH</u>
	<u>MAXIMUM DEPTH</u>
<u>CHUM SEASON</u>	<u>6-1/4 INCH MINIMUM MESH</u>
<u>FRASER SOCKEYE</u>	<u>5 INCH MINIMUM MESH</u>
	<u>5-1/2 INCH MAXIMUM MESH</u>

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-47-307 Closed areas—Puget Sound salmon. It is unlawful at any time, unless otherwise provided, to take, fish for, or possess salmon taken for commercial purposes with any type of gear from the following portions of Puget Sound Salmon Management and Catch Reporting Areas, except that closures listed in this section shall not apply to reef net fishing areas listed in RCW 75.12.140:

Areas 4B, 5, 6, 6B, and 6C - The Strait of Juan de Fuca Preserve as defined in WAC 220-47-266.

Area 6D - That portion within ((1,000 feet)) 1/4 mile of each mouth of the Dungeness River.

Area 7 - (1) The San Juan Island Preserve as defined in WAC 220-47-262.

(2) Those waters within 1,500 feet of shore on Orcas Island from Deer Point northeasterly to Lawrence Point thence west to a point intercepting a line projected from the northernmost point of Jones Island thence 90° true to Orcas Island.

(3) Those waters within 1,500 feet of the shore of Cypress Island from Cypress Head to the northernmost point of Cypress Island.

(4) Those waters easterly of a line projected from Iceberg Point to Iceberg Island, to the easternmost point of Charles Island, then true north from the northernmost point of Charles Island to the shore of Lopez Island.

(5) Those waters northerly of a line projected from the southernmost point of land at Aleck Bay to the westernmost point of Colville Island, thence from the easternmost point of Colville Island to Point Colville.

(6) Those waters easterly of a line projected from Biz Point on Fidalgo Island to the Williamson Rocks Light, thence to the Dennis Shoal Light, thence to the light on the westernmost point of Burrows Island, thence to the southwesternmost point of Fidalgo Head, and including those waters within 1,500 feet of the western shore of Allan Island, those waters within 1,500 feet of the western shore of Burrows Island, and those waters within 1,500 feet of the shore of Fidalgo Island from the southwesternmost point of Fidalgo Head northerly to Shannon Point.

(7) Additional Fraser sockeye and pink seasonal closure: Those waters within 1,500 feet of the shore of Fidalgo Island from the Initiative 77 marker northerly to Biz Point, those waters easterly of a line projected from Biz Point on Fidalgo Island to the Williamson Rocks light, thence to the Dennis Shoal Light, thence to the light on the westernmost point of Burrows Island, thence to the southwesternmost point of Fidalgo Island, those waters within 1,500 feet of the western shore of Allan Island, those waters within 1,500 feet of the western shore of Burrows Island, and those waters within 1,500 feet of the shore of Fidalgo Island from Fidalgo Head northerly to Shannon Point).

((7)) (8) Those waters within 1,500 feet of the eastern shore of Lopez Island from Point Colville northerly to Lopez Pass, and those waters within 1,500 feet of the eastern shore of Decatur Island from the southernmost point of land northerly to Fauntleroy Point, and including those waters within 1,500 feet of the shore of James Island.

Area 7A - The Drayton Harbor Preserve as defined in WAC 220-47-252.

Area 7B - That portion south and east of a line from William Point on Samish Island to Saddlebag Island to the southeastern tip of Guemes Island, and that portion northerly of the railroad trestle in Chuckanut Bay.

Area 7C - That portion southeasterly of a line projected from the mouth of Oyster Creek 237° true to a fishing boundary marker on Samish Island.

Area 8 - (1) That portion of Skagit Bay easterly of a line projected from Brown Point on Camano Island to a white monument on the easterly point of Ika Island, thence across the Skagit River to the terminus of the jetty with McGlinn Island.

(2) Those waters within 1,500 feet of the western shore of Camano Island south of a line projected true west from Rocky Point.

Area 8A - (1) Those waters easterly of a line projected from Mission Point to Buoy C1, excluding the waters of Area 8D, thence through the green light at the entrance jetty of the Snohomish River and across the mouth of the Snohomish River to landfall on the eastern shore, and those waters northerly of a line from Camano Head to the northern boundary of Area 8D.

(2) Additional pink seasonal closure: Those waters southerly of a line projected from Randall Point 132 degrees true to the base of the fuel dock at the Mukilteo tank farm.

Area 9 - Those waters lying inside and westerly of a line projected from the Point No Point light to Sierra Echo buoy thence to Forbes Landing wharf, east of Hansville.

Area 10 - (1) Those waters easterly of a line projected from Meadow Point to West Point.

(2) Those waters of Port Madison northwest of a line from the Agate Pass entrance light to the light on the end of the Indianola dock.

(3) Additional coho seasonal closure: Those waters of Elliott Bay east of a line from Alki Point to the light at Four-mile Rock and those waters northerly of a line projected from Point Wells to "SF" Buoy then west to President's Point.

Area 10E - Those waters of Liberty Bay north of a line projected due east from the southernmost Keyport dock, those waters of Dyes Inlet north of the Manette Bridge, and those waters of Sinclair Inlet southwest of a line projected true east from the Bremerton ferry terminal.

Area 11 - (1) Those waters northerly of a line projected true west from the light at the mouth of Gig Harbor and those waters south of a line from Browns Point to the northernmost point of land on Point Defiance.

(2) Additional coho seasonal closure: Those waters south of a line projected from the light at the mouth of Gig Harbor to the Tahlequah ferry dock then south to the Point Defiance ferry dock, and those waters south of a line projected from the Point Defiance ferry dock to Dash Point.

Area 12 - Those waters inside and easterly of a line projected from Lone Rock to the navigation light off Big Beef Creek, thence southerly to the tip of the outermost northern headland of Little Beef Creek.

Area 12A - Those waters north of a line projected due east from Broad Spit.

Area 12B - Those waters within 1/4 mile of the mouths of the Dosewallips, Duckabush, and Hamma Hamma rivers and Anderson Creek.

Areas 12, 12A, and 12B - Additional chinook seasonal closure: Those waters north and east of a line projected from Tekiu Point to Triton Head.

Areas 12, 12B and 12C - Those waters within 1,000 feet of the eastern shore.

Area 12C - (1) Those waters within 2,000 feet of the western shore between the dock at Glen Ayr R.V. Park and the Hood sport marina dock.

(2) Those waters south of a line projected from the Cushman Powerhouse to the public boat ramp at Union.

(3) Those waters within 1/4 mile of the mouth of the Dewatto River.

Areas 12 and 12D - Additional coho and chum seasonal closure: Those waters of Area 12 south and west of a line projected 94 degrees true from Hazel Point to the light on the opposite shore, bounded on the west by the Area 12/12B boundary line, and those waters of Area 12D.

Area 13A - Those waters of Burley Lagoon north of State Route 302, those waters within 1,000 feet of the outer oyster stakes off Minter Creek Bay including all waters of Minter Creek Bay, those waters westerly of a line drawn due north from Thompson Spit at the mouth of Glen Cove, and those waters within 1/4 mile of Green Point.

((AREA))	TIME	DATE	TIME	DATE
	7AM	-	5PM	11/04, 11/05, 11/09, 11/10, 11/18, 11/19, 11/23, 11/24, 11/25, 11/30, +2/01
10, 11:	7AM	-	6PM	10/26
	7AM	-	5PM	11/03, 11/04, 11/09, 11/17, 11/23
12, 12B:	7AM	-	6PM	10/20, 10/26
	7AM	-	5PM	11/04, 11/05, 11/09, 11/10, +11/17

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-47-311 Purse seine—Open periods. During ((1997)) 1999, it is unlawful to take, fish for or possess salmon taken with purse seine gear for commercial purposes from Puget Sound except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided for hereinafter in each respective Management and Catch Reporting Area:

((AREA))	TIME	DATE	TIME	DATE	AREA	TIME	DATE	TIME	DATE
7, 7A:	7AM	-	6PM	10/20, 10/26	7, 7A:	7AM	-	6PM	10/19, 10/25
	7AM	-	5PM	11/04, 11/05, 11/09, 11/10, 11/11, 11/12		7AM	-	5PM	11/3, 11/4, 11/8, 11/9, 11/10, 11/11
7B:	6AM	9/08	4PM	9/11	7B:	6AM	9/7	4PM	9/9
	6AM	9/14	4PM	9/18		6AM	9/13	4PM	9/15
	6AM	9/20	4PM	+0/31		6AM	9/19	4PM	10/23
	6AM	+1/02	4PM	+1/06		6AM	10/25	4PM	10/29
	6AM	+1/09	4PM	+1/13		6AM	11/1	4PM	11/5
	6AM	+1/16	4PM	+1/20		6AM	11/8	4PM	11/12
	6AM	+1/23	4PM	+1/27		6AM	11/15	4PM	11/19
	6AM	+1/30	4PM	+2/04		6AM	11/22	4PM	11/26
	6AM	+2/07	4PM	+2/11		6AM	11/29	4PM	12/3
	7AM	-	6PM	+0/26		6AM	12/6	4PM	12/10
	7AM	-	5PM	11/03, 11/09, 11/17, 11/23		7AM	-	6PM	10/25
8:	6AM	9/08	4PM	9/11		7AM	-	5PM	11/2, 11/8, 11/16, 11/22
	6AM	9/14	4PM	9/18		7AM	-	9PM	8/24, 8/30
	6AM	9/20	4PM	+0/31		7AM	-	7PM	10/11
	6AM	+1/02	4PM	+1/06		7AM	-	6PM	10/20, 10/21, 10/25, 10/26
	6AM	+1/09	4PM	+1/13	8A:	5AM	-	5PM	11/3, 11/4, 11/8, 11/9, 11/17, 11/18
	6AM	+1/16	4PM	+1/20		7AM	-	5PM	11/22, 11/23, 11/24
	6AM	+1/23	4PM	+1/27		7AM	-	7PM	10/11
	6AM	+1/30	4PM	+2/04		7AM	-	6PM	10/20, 10/21, 10/25, 10/26
	6AM	+2/07	4PM	+2/11		7AM	-	5PM	11/3, 11/4, 11/8, 11/9, 11/17, 11/18
8:	7AM	-	6PM	+0/26		7AM	-	7PM	9/21, 9/22, 9/23, 9/28
	7AM	-	5PM	11/03, 11/09, 11/17, 11/23		7AM	-	7PM	9/29, 9/30
8A:	7AM	-	6PM	10/21, 10/22, 10/26, 10/27		7AM	-	7PM	10/4, 10/5, 10/6, 10/7
	7AM	-	5PM	11/04, 11/05, 11/09, 11/10, 11/18, 11/19, 11/23, 11/24, 11/25, 11/30, +2/01		7AM	-	7PM	10/11
	7AM	-	6PM	10/21, 10/22, 10/26, 10/27	8D:	7AM	-	6PM	10/20, 10/21, 10/25, 10/26
	7AM	-	5PM	11/04, 11/05, 11/09, 11/10, 11/18, 11/19, 11/23, 11/24, 11/25, 11/30, +2/01		7AM	-	5PM	11/3, 11/4, 11/8, 11/9, 11/17, 11/18
	7AM	-	6PM	10/21, 10/22, 10/26, 10/27		7AM	-	6PM	11/2, 11/3, 11/8, 11/16
8D:	7AM	-	7PM	9/21, 9/22, 9/23, 9/24, 9/29, 9/30, 10/01, 10/02, 10/05, 10/06, 10/07, 10/08, 10/13, 10/14, 10/15, 10/16		7AM	-	6PM	10/19, 10/25
	7AM	-	6PM	10/21, 10/22, 10/26, 10/27	10, 11:	7AM	-	5PM	11/2, 11/3, 11/8, 11/16
	7AM	-	6PM	10/21, 10/22, 10/26, 10/27	12, 12B:	7AM	-	6PM	10/19, 10/25

AMENDATORY SECTION (Amending Order 97-124, filed 7/29/97, effective 8/29/97)

WAC 220-47-325 Purse seine—Release of incidentally caught fish. (1) It is unlawful for any purse seine vessel operator landing salmon directly into the hold. All salmon must be landed to the deck, or sorting tray or table, of the harvesting vessel with the hold hatch cover(s) closed until release of salmon that may not be retained is complete and additionally:

(2) During Fraser sockeye and pink salmon species seasons in Areas 7 and 7A, it is unlawful for any purse seine vessel operator to bring salmon aboard a vessel unless all salmon captured in the seine net are removed from the seine net using a brailer or dip net meeting the specifications in this section prior to the seine net being removed from the water.

(3) The brailer shall be constructed in the following manner and with the following specifications:

(a) A bag of web hung on a rigid hoop attached to a handle:

(b) The bag shall be opened by releasing a line running through rings attached to the bottom of the bag;

(c) The hoop:

(i) If formed in a circle, shall have a maximum inside diameter of 122 cm (48 inches); or

(ii) If in a shape other than a circle, shall have a maximum inside circumference of 381 cm (150 inches);

(d) The web shall be of soft knotless construction and the mesh size may not exceed 57 mm (2.25 inches) measured along two contiguous sides of a single mesh; and

(e) The maximum distance from the top of the hoop to the bottom of the web when in an open condition shall not exceed 148 cm (58 inches).

(4) Hand held dip nets shall be constructed of a shallow bag of soft, knotless web attached to a handle.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-47-401 Reef net open periods. During ((1997)) 1999, it is unlawful to take, fish for or possess salmon taken with reef net gear for commercial purposes in Puget Sound except in the following designated Puget Sound Salmon Management and Catch Reporting Areas, during the periods provided for hereinafter in each respective area:

It is unlawful to retain chinook salmon taken with reef net gear. It is unlawful to retain coho salmon taken with reef net gear while the Fraser River Panel of the Pacific Salmon Commission maintains regulatory control of fisheries in Area 7. It is unlawful to retain chum salmon taken with reef net gear prior to October 1. All other saltwater and freshwater areas - closed.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-47-410 **Gill net—Daily hours.** It ((shall be)) is unlawful to take or fish ((for sockeye or pink salmon)) during the Fraser sockeye and pink salmon species seasons in Areas 7 or 7A with gill net gear from 12:00 midnight to 1.5 hours after sunrise.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-47-411 Gill net—Open periods. During ((1997)) 1999, it is unlawful to take, fish for or possess salmon taken with gill net gear for commercial purposes from Puget Sound except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the seasons provided for hereinafter in each respective fishing area:

(AREA	TIME	DATE(S)
6D:	7AM-7PM Daily	9/21-9/25 9/28-10/2 10/5-10/9 10/12-10/16 10/19-10/23

Note: Area 6D skiff gill net only. It is unlawful to retain chinook, pink, or chum salmon in Area 6D.

7,7A:	7AM-7PM	10/19
	7AM-6PM	10/27, 11/2, 11/3, 11/9, 11/10, 11/11, 11/12

7B:	7PM-9AM	NIGHTLY	8/17, 8/24, 8/31
6AM	9/8	-	4PM 9/11
6AM	9/14	-	4PM 9/18
6AM	9/20	-	4PM 10/31
6AM	11/2	-	4PM 11/6
6AM	11/9	-	4PM 11/13

				AREA	TIME		DATE(S)
6AM	11/16	-	4PM	11/20	6AM	11/1	4PM 11/5
6AM	11/23	-	4PM	11/27	6AM	11/8	4PM 11/12
6AM	11/30	-	4PM	12/4	6AM	11/15	4PM 11/19
6AM	12/7	-	4PM	12/11	6AM	11/22	4PM 11/26
7C:	7PM-9AM	NIGHTLY		8/17, 8/24, 8/31	6AM	11/29	4PM 12/3
8:	7AM-6PM			10/27, 11/2, 11/10,	6AM	12/6	4PM 12/10
				11/16	7C:	7PM-9AM	NIGHTLY 8/16, 8/23, 8/24, 8/30, 8/31
				11/24	8:	6AM	11PM 8/24, 8/30
8A:	7AM-7PM			10/19, 10/20	7AM	8PM	10/26, 11/1, 11/9, 11/15, 11/23
				10/28, 10/29, 11/2,	8A:	6AM	11PM 8/23, 8/31
				11/3, 11/11, 11/12,	7AM	8PM	10/12, 10/18, 10/19, 10/27, 10/28, 11/1, 11/2, 11/10, 11/11, 11/15, 11/16, 11/22, 11/23, 11/24
				11/16, 11/17			
				11/23, 11/24, 11/25,			
				12/2, 12/3			
8D:	6PM-8AM	NIGHTLY		9/21-9/24	8D:	6PM-8AM	NIGHTLY 9/20, 9/21, 9/22, 9/27, 9/28, 9/29, 10/4, 10/5, 10/6, 10/7, 10/8, 10/12-10/15
				10/19, 10/20	7AM	8PM	10/12, 10/18, 10/19, 10/27, 10/28, 11/1, 11/2, 11/10, 11/11, 11/15, 11/16, 11/22, 11/23, 11/24
				10/28, 10/29, 11/2,			
				11/3, 11/11, 11/12,	9A:	6AM	9/19 through 4PM 10/30
				11/16, 11/17	10-11:	5PM-8AM	NIGHTLY 10/18, 10/25
				11/23, 11/24, 11/25,		4PM-8AM	NIGHTLY 11/1, 11/2, 11/8, 11/15
				12/2, 12/3	12, 12B:	7AM	8PM 10/18, 10/26, 11/1, 11/2, 11/10, 11/11, 11/15
9A:	6AM	9/13 through	4PM	10/31	12C:	7AM	8PM 11/15, 11/23
10, 11:	5PM-8AM			10/26, 10/27			All other saltwater and freshwater areas - closed.
	4PM-8AM	NIGHTLY		11/2, 11/3, 11/9, 11/16, 11/23			Nightly openings refer to the start date.
12, 12B:	7AM-7PM			10/19			
	7AM-6PM			10/27, 11/2, 11/3, 11/11, 11/12, 11/16			
12C:	7AM-6PM			11/16			
	7AM-5PM			11/24			
All other saltwater and freshwater areas - closed.							
Nightly openings refer to the start date.:-)							

AREA	TIME		DATE(S)
6D:	7AM	-	7PM 9/20, 9/21, 9/22, 9/23, 9/24, 9/27, 9/28, 9/29, 9/30, 10/1, 10/4, 10/5, 10/6, 10/7, 10/8, 10/11, 10/12, 10/13, 10/14, 10/15, 10/18, 10/19, 10/20, 10/21, 10/22

Note: Area 6D skiff gill net only, using 5-inch minimum and 5 1/2-inch maximum mesh. It is unlawful to retain chinook or pink salmon taken in Area 6D at any time, or any chum salmon taken in Area 6D prior to October 16. In Area 6D, any chinook or pink salmon captured at any time, or any chum salmon captured prior to October 16, must be removed from the net by cutting the meshes ensnaring the fish.

7A:	7AM	-	8PM	10/18, 10/26, 11/1, 11/2, 11/8, 11/9, 11/10, 11/11
7B:	7PM-9AM	NIGHTLY		8/16, 8/23, 8/24, 8/30, 8/31
	6AM	9/7	-	4PM 9/9
	6AM	9/13	-	4PM 9/15
	6AM	9/19	-	4PM 10/23
	6AM	10/25	-	4PM 10/29

~~the designated vessel in the open fishery area~~) two days each week during the open fishing period.

(b) If the Quilcene permit holder fails to participate, the Quilcene permit issued to that fisher will be void and a new Quilcene permit will be issued through a random drawing from the applicant pool established in 1996.

(c) The department may require proof of participation by registering with state, federal or tribal officials each day the Quilcene permit holder participates.

(d) Persons who participate, but violate conditions of a Quilcene permit, will have the permit voided and a new Quilcene permit will be reissued through a random drawing from the pool of the voided permit holder.

(5) Chum salmon may not be retained by a Quilcene permit holder. Chum salmon must be released alive, or, at the direction of federal or state officials, submitted for broodstock purposes.

((5)) (6) Any person who fails to purchase the license, fails to participate, or violates the conditions of a Quilcene permit will have his or her name permanently withdrawn from the pools.

((6)) (7) It is unlawful to take salmon with beach seine gear that does not meet the requirements of this subsection.

(a) Beach seine salmon nets in Puget Sound shall not exceed 600 feet in length or 100 meshes in depth, or contain meshes of a size less than 3 inches or greater than 4 inches.

(b) Mesh webbing must be constructed with a twine size no smaller than 210/30d nylon, 12 thread cotton, or the equivalent diameter in any other material.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-47-428 Beach seine—Open periods. During ((1997)) 1999, it is unlawful to take, fish for, or possess salmon taken with beach seine gear for commercial purposes from Puget Sound except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided hereinafter in each respective Management and Catch Reporting Area:

AREA	TIME	DATE(S)
12A:	7AM - 7PM Daily	((8/31-9/4 9/7-9/11 9/14-9/18 9/21-9/25 9/28-10/2 10/5-10/9)) 8/30, 8/31, 9/1, 9/2, 9/3, 9/6, 9/7, 9/8, 9/9, 9/10, 9/13, 9/14, 9/15, 9/16, 9/17, 9/20, 9/21, 9/22, 9/23, 9/24, 9/27, 9/28, 9/29, 9/30, 10/1, 10/4, 10/5, 10/6, 10/7, 10/8, 10/11, 10/12, 10/13, 10/14, 10/15

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-47-412

Drift gill net and skiff gill net—Mesh sizes.

NEW SECTION

WAC 220-47-430 Puget Sound commercial salmon—Log book required. It is unlawful for any licensed commercial salmon fisher fishing for salmon in Puget Sound SMCRAs 7 and 7A during the Fraser sockeye and pink salmon season set out in WAC 220-47-304 to fail to possess and maintain a department-approved Puget Sound Commercial Salmon Log Book as provided for in this section:

(1) The log book must be kept aboard the vessel while it is fishing in SMCRAs 7 and 7A, or while in possession of fish caught in these areas. The fisher must submit the completed log book for inspection immediately upon request by authorized department representatives.

(2) In each purse seine log book the fisher shall record the vessel name and license number. For each day fished, the fisher shall record the date. Immediately following each retrieval of the net the fisher shall record the Puget Sound Commercial Salmon Log Book Location Code, the time of the retrieval, and the number of chinook, coho and chum salmon in the net upon retrieval.

(3) In each gill net log book the fisher shall record the vessel name and license number. For each day fished, the fisher shall record the date. Immediately following each retrieval of the net the vessel operator shall record the Puget Sound Commercial Salmon Log Book Location Code where the net is retrieved, the start and end time of the set, and the number of chinook, coho and chum salmon in the net upon retrieval.

(4) The following are the Puget Sound Commercial Salmon Log Book Location Codes that are required entries in purse seine log books and gill net log books as provided for in this section:

(a) Location Code 1: Those waters of Puget Sound Commercial Salmon Management and Catch Reporting Area 7A northerly of a line projected from Birch Point to Savage Point on Tumbo Island.

(b) Location Code 2: Those waters of Puget Sound Commercial Salmon Management and Catch Reporting Area 7A southerly of a line projected from Birch Point to Savage Point on Tumbo Island.

(c) Location Code 3: Those waters of Puget Sound Commercial Salmon Management and Catch Reporting Area 7 easterly of a line projected true north from Orcas Island through the easternmost point on Matia Island to the intersection with the 7/7A boundary line and easterly of a line projected from Point Colville on Lopez Island to Smith Island.

(d) Location Code 4: Those waters of Puget Sound Commercial Salmon Management and Catch Reporting Area 7 westerly and northerly of a line projected from Point Colville on Lopez Island to Smith Island and thence to the Y B "VD" buoy on Beaumont Shoal (as listed on NOAA Chart

18421 [38th ed., Oct. 31/92]) and southerly of a line projected from Cadboro Point on Vancouver Island 60 degrees true to the point of land on San Juan Island.

(e) Location Code 5: Those waters of Puget Sound Commercial Salmon Management and Catch Reporting Area 7 southerly of a line projected from Smith Island to the Y B "VD" buoy on Beaumont Shoal (as listed on NOAA Chart 18421 [38th ed., Oct. 31/92]).

(f) Location Code 6: Those waters of Puget Sound Commercial Salmon Management and Catch Reporting Area 7 northerly of a line projected from Cadboro Point on Vancouver Island 60 degrees true to the point of land on San Juan Island and westerly of a line projected true north from Orcas Island through the easternmost point on Matia Island to the intersection with the 7/7A boundary line.

(5) In each reef net log book the fisher shall record the fisher's name and license number and the location of the fishing site. For each day fished the fisher shall record the date and the total number of chinook, coho and chum salmon caught.

(6) All log books must be sent to the department no later than October 10 of each year.

WSR 99-11-098
EXPEDITED ADOPTION
DEPARTMENT OF
FISH AND WILDLIFE

[Filed May 19, 1999, 10:53 a.m.]

Title of Rule: Personal use rules.

Purpose: Amend personal use rules for 1999-2000 licensing year.

Statutory Authority for Adoption: RCW 75.08.080.

Statute Being Implemented: RCW 75.08.080.

Summary: Amends recreational fishing rules, primarily due to Pacific Fisheries Management Council and North of Falcon process regarding anadromous fish, corrects errors from earlier proposals and public hearings, and sets shrimp seasons after public meetings were held in early spring.

Reasons Supporting Proposal: These rules are needed to afford recreational fishing opportunity but provide protection for stocks that are at risk. See Explanation of Rule below for further description.

Name of Agency Personnel Responsible for Drafting: Evan Jacoby, 1111 Washington Street, Olympia, (360) 902-2930; **Implementation:** Bruce Crawford, 1111 Washington Street, Olympia, (360) 902-2325; and **Enforcement:** Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2927.

Name of Proponent: Washington State Department of Fish and Wildlife, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: WAC 220-16-550, corrects geographical coordinate. WAC 220-56-105, establishes mouth of Chamber Creek to separate fresh water fishery from salt water fisher. WAC 220-56-115, establishes 2-ounce restriction to protect chinook. WAC 220-56-123, Westport Boat Basin season.

WAC 220-56-124, liberalize chinook retention at Hoodsport Hatchery. WAC 220-56-185, corrects buoy description. WAC 220-56-190, sets coastal salmon seasons. WAC 220-56-191, sets Puget Sound salmon seasons. WAC 220-56-195, redefines closed areas. Closes eastern San Juans for chinook protection. WAC 220-56-205, sets nonbuoyant lures for 1999 season. WAC 220-56-235, reduces lingcod limit in coastal waters. WAC 220-56-255, sets halibut season. Limits incorporated into WAC for simplicity. WAC 220-56-310, sets maximum spot shrimp limit in Discovery Bay. Hood Canal shrimp limit set at eighty shrimp. WAC 220-56-325, sets spot shrimp seasons. Chapter 220-57 WAC, sets salmon river seasons consistent with recommendations of PFMC. WAC 232-12-619, corrects free fishing weekend. WAC 232-28-619, sets river seasons consistent with PFMC. Bear River changed to protect sea run cutthroat as per public meeting resulting in WSR 99-08-029. Disability fisheries offered in lakes as per recreational license changes resulting in WSR 99-03-029.

Proposal Changes the Following Existing Rules: Geographical descriptions, gear, seasons, and closed areas.

NOTICE

THIS RULE IS BEING PROPOSED TO BE ADOPTED USING AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS RULE BEING ADOPTED USING THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Evan Jacoby, Rules Coordinator, Washington State Fish and Wildlife, 600 Capitol Way North, Olympia, WA 98501-1091, AND RECEIVED BY July 17, 1999.

May 19, 1999

Evan Jacoby

Rules Coordinator

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-16-550 Octopus Hole Conservation Area.

"Octopus Hole Conservation Area" is defined as those waters and bedlands of Hood Canal within a line projected due east from the western shore of Hood Canal on latitude 47°27'01"N for 200 yards, thence southerly 628 yards parallel to the high water mark to latitude ((47°26'66")) 47°26'40", thence due west to shore, but excluding those tidelands, bedlands and waters within 100 feet of the high water mark.

AMENDATORY SECTION (Amending WSR 98-06-031, filed 2/26/98, effective 5/1/98)

WAC 220-56-105 River mouth definitions. When pertaining to food fish angling, unless otherwise defined, any reference to the mouths of rivers or streams shall be construed to include those waters of any river or stream including

sloughs and tributaries upstream and inside of a line projected between the outermost uplands at the mouth. The term "outermost upland" shall be construed to mean those lands not covered by water during an ordinary high tide. The following river mouths are hereby otherwise defined:

Abernathy Creek - Highway 4 Bridge.

Bear River - Highway 101 Bridge.

Bone River - Highway 101 Bridge.

Chambers Creek - Burlington Northern Railroad Bridge.

Chehalis River - Highway 101 Bridge in Aberdeen.

Cowlitz River - A line projected across the river between two fishing boundary markers set on each bank of the river approximately one-half mile downstream from the lowermost railroad bridge crossing the Cowlitz River.

Dakota Creek - A line from the outermost headland of the south bank to a house at 1285 Runge Avenue, Blaine, Washington, approximately one-quarter mile downstream from the Blaine Road Bridge.

Deschutes River - A line projected across the river 400 feet below the lower Tumwater Falls fish ladder.

Drano Lake - Highway 14 Bridge.

Duwanish River - First Avenue South Bridge.

Elk River - Highway 105 Bridge.

Entiat River - Highway 97 Bridge.

Hoquiam River - Highway 101 Bridge.

Humptulips River - Mouth of Jessie Slough.

Johns River - Highway 105 Bridge.

Kennedy Creek - An arc 500 yards east of the midpoint of the northbound Highway 101 Bridge.

Kettle River - Barstow Bridge.

Lake Washington Ship Canal - A line 400 feet west of the fish ladder at the Chittenden Locks.

Lewis River - A straight line running from a boundary marker on a piling at Austin Point southerly across the Lewis River to a boundary marker on the opposite shore.

Methow River - Highway 97 Bridge.

Naselle River - Highway 101 Bridge.

North Nemah River - Highway 101 Bridge.

Niawiakum River - Highway 101 Bridge.

North River - Highway 105 Bridge.

Palix River - Highway 101 Bridge.

Puyallup River - 11th Street Bridge.

Samish River - The Samish Island Bridge (Bayview-Edison Road).

Sammamish River - 68th Avenue NE Bridge.

Skagit River - A line projected from the terminus of the jetty with McGlinn Island to the white monument on the easterly end of Ika Island, then to a white monument on the westerly end of Craft Island, then to a white monument near the corner of the levee on the westerly side of Dry Slough, and then to a white monument on the easterly side of Tom Moore Slough.

Skamokawa Creek - Highway 4 Bridge.

Skookum Creek - A line 400 yards below the old railroad bridge.

Snohomish River - Burlington Northern Railway Bridges crossing main river and sloughs.

South Nemah River - Lynn Point 117 degrees true to the opposite shore.

Spokane River - State Route 25 Bridge.

Tucannon River - State Highway 261 Bridge.

Wallace River - The furthest downstream railroad bridge.

Washougal River - A straight line from the Crown Zellerbach pumphouse southeasterly across the Washougal River to the east end of the Highway 14 Bridge near the upper end of Lady Island.

Whatcom Creek - A line projected approximately 14 degrees true from the flashing light at the southwesterly end of the Port of Bellingham North Terminal to the southernmost point of the dike surrounding the Georgia Pacific treatment pond.

White Salmon River - Markers downstream of the Burlington Northern Railroad Bridge.

Little White Salmon River - At boundary markers on river bank downstream from the federal salmon hatchery.

Willapa River - South Bend boat launch.

Wind River - Boundary line markers at mouth.

Yakima River - Highway 240 Bridge.

AMENDATORY SECTION (Amending WSR 98-06-031, filed 2/26/98, effective 5/1/98)

WAC 220-56-115 Angling—Lawful and unlawful acts. (1) It is unlawful for any person to use more than one line with three hooks while angling for food fish for personal use except:

(a) It is unlawful to use more than two hooks while fishing for bottomfish or halibut.

(b) It is lawful to use forage fish jigger gear as provided for in WAC 220-56-265 and squid jig gear as provided for in WAC 220-56-390.

(c) A second line using forage fish jigger gear is lawful while fishing in Catch Record Card Areas 5, 6, 7, 8-1, 8-2, 9, 10, 11, 12, and 13.

(2) It shall be unlawful for any person to take, fish for or possess food fish taken for personal use by any means other than angling with a line attached to a pole held in hand while

landing the fish or with a hand-operated line without rod or reel except as follows:

(a) It is lawful to leave the pole in a pole holder while playing or landing the fish if the pole is capable of being readily removed from the pole holder.

(b) It is lawful to use an electric power-operated reel designed for sport fishing attached to a pole.

(c) It is lawful to fish for or possess salmon taken for personal use with hand lines (lines not attached to a handheld pole) except use of hand lines is unlawful in those waters west of the mouth of the Sekiu River, the Pacific Ocean, Washington waters at the mouth of the Columbia River west of a line projected true north and south through Buoy 10, Grays Harbor, and Willapa Bay.

(3) It shall be unlawful for any person while angling for food fish to fail to keep his angling gear under his direct and immediate physical control.

(4) In the following Catch Record Card Areas or designated portions during the following periods it is unlawful to use a downrigger, to use more than two ounces of weight attached to a line, or to use a lure or diver weighing more than two ounces:

(a) Area 9 - August 1 through August 31.

(b) Area 10 - July 1 through August 31.

(c) Area 12 north of Ayock Point - August 1 through August 31.

AMENDATORY SECTION (Amending WSR 94-14-069, filed 7/1/94, effective 8/1/94)

WAC 220-56-123 Unlawful provisions—Westport Boat Basin. During the period ((July 1)) August 16 through ((November 30)) January 31, in the waters of the Westport Boat Basin:

(1) It is unlawful to fish for or possess salmon taken for personal use using any gear other than the gear provided for in this section:

(a) Nonbuoyant lures are defined as lures that do not have enough buoyancy to float in freshwater. Nonbuoyant lures other than natural bait lures must have no more than one single hook and that hook may not exceed 3/4 inch from point to shank. Nonbuoyant natural bait lures may have no more than two single hooks each of which may not exceed 3/4 inch from point to shank.

(b) Buoyant lures are defined as lures that have enough buoyancy to float in freshwater and may have any number of hooks.

(c) No leads, weights, or sinkers may be attached below or less than 12 inches above a lure.

(d) All hooks must be attached within 3 inches of the bait or lure.

(2) It is unlawful to fish for or possess food fish or shellfish from one hour after official sunset to one hour before official sunrise.

(3) It is unlawful to use baitfish jigger gear.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-56-124 Unlawful provisions—Hoodsport Hatchery. During the period July 1 through December 15, those waters of Catch Record Card Area 12 within a 2,000 foot arc seaward of yellow buoys at the mouth of Finch Creek at the Hoodsport Salmon Hatchery are regulated as provided for in this section:

(1) These waters are open to salmon angling regardless of the status of the surrounding waters of Area 12.

(2) Special daily limit of four salmon, ((except release chum salmon and)) of which no more than ((one)) two salmon may be ((a)) chinook salmon ((—)). Release chum salmon July 1 through October 15. ((Special daily limit of four salmon of which no more than one may be a chinook salmon—October 16 through December 15.))

(3) It is unlawful to fish for or possess salmon taken from these waters from one hour after sunset to one hour before sunrise.

AMENDATORY SECTION (Amending Order 99-13, filed 3/30/99, effective 5/1/99)

WAC 220-56-185 Marine area codes. The term "marine area code numbers" is defined as the catch area for the catch record card. The following is a list of the catch areas:

(1) Area 1 (Ilwaco): West of the Megler-Astoria Bridge - north to Leadbetter Point. Waters west of the Buoy 10 Line and north to Leadbetter Point.

(2)(a) Area 2 (Westport-Ocean Shores): From Leadbetter Point north to the Queets River. Area 2 excludes waters of Willapa Bay and Grays Harbor.

(b) Area 2-1: Willapa Bay east of a line from Leadbetter Point to Willapa Channel Marker 8 (Buoy 8) then to the westerly most landfall on Cape Shoalwater.

(c) Area 2-2: Grays Harbor east of a line from the outermost end of the north jetty to the outermost exposed end of the south jetty.

(3) Area 3 (La Push): From the Queets River north to Cape Alava.

(4) Area 4 (Neah Bay): From Cape Alava north and inside Juan de Fuca Strait to the Sekiu River.

(5) Area 5 (Sekiu and Pillar Point): From mouth of Sekiu River east to Low Point, mouth of the Lyre River.

(6) Area 6 (East Juan de Fuca Strait): From Low Point east to the Partridge Point-Point Wilson line north to the line from Trial Island (near Victoria, B.C.) - ((Vessel Traffic Separation Buoy "R")) Rosario Strait Traffic Lane Entrance Lighted Buoy R (USCG Light List No. 16340, referenced as Y "R" on National Ocean Service Chart No. 18400-1 dated 1997-08-30) - Smith Island - the most northeasterly of the Lawson Reef lighted buoys (RB1 QK Fl Bell) - Northwest Island - the Initiative 77 marker on Fidalgo Island.

(7) Area 7 (San Juan Islands): All marine waters north of the line described under Area 6 to the United States-Canadian boundary.

(8)(a) Area 8 (Deception Pass, Hope and Camano Islands): Line projected from West Point on Whidbey Island

to Reservation Head on Fidalgo Island east through Deception Pass, including all waters east of Whidbey Island to the Possession Point - Shipwreck Line.

(b) Area 8-1 (Deception Pass and Hope Island): East of a line projected from West Point on Whidbey Island to Reservation Head on Fidalgo Island, south of the Burlington Northern Railroad Bridge at the north end of Swinomish Slough, north of the Highway 532 Bridge between Camano Island and the mainland, and westerly of a line from the East Point Light on Whidbey Island to the Saratoga Pass Light #2 on Camano Island (Fl red 4 sec.).

(c) Area 8-2 (Port Susan and Port Gardner): East of a line from the East Point Light on Whidbey Island to the Saratoga Pass Light #2 on Camano Island (Fl red 4 sec.) and north of a line from the south tip of Possession Point 110 degrees true to a shipwreck on the opposite shore.

(9) Area 9 (Admiralty Inlet): All waters inside and south of the Partridge Point-Point Wilson Line and a line projected from the southerly tip of Possession Point 110 degrees true to a shipwreck on the opposite shore and northerly of the Hood Canal Bridge and the Apple Cove Point-Edwards Point Line.

(10) Area 10 (Seattle-Bremerton): From the Apple Cove Point-Edwards Point Line to a line projected true east-west through the northern tip of Vashon Island.

(11) Area 11 (Tacoma-Vashon Island): From the northern tip of Vashon Island to the Tacoma Narrows Bridge.

(12) Area 12 (Hood Canal): All contiguous waters south of the Hood Canal Bridge and adjacent waters north of the Hood Canal Bridge when fishing from the pontoon beneath the bridge.

(13) Area 13 (South Puget Sound): All contiguous waters south of the Tacoma Narrows Bridge.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-56-190 Coastal salmon—Saltwater seasons and daily limits. It shall be unlawful to take, fish for or possess salmon taken by angling for personal use except from the following coastal areas, during the seasons, in the quantities, sizes and for the species designated in this section and as defined in the daily limit codes in WAC 220-56-180:

(1) Catch Record Card Area 1 - Special daily limit of two salmon not more than one of which may be a chinook salmon, except release wild coho salmon, special cumulative limit of ((four)) six salmon in any Sunday through the following Thursday period - Sundays through Thursdays only, ((August 3)) July 19 through September ((24)) 30, except closed in the Columbia River Mouth Control Zone 1, see WAC 220-56-195.

(2) Catch Record Card Area 2 and Catch Record Card Area 2-2 west of the Buoy 13 line - Special daily limit of two salmon only one of which may be a chinook salmon, except release wild coho salmon, special cumulative limit of ((four)) six salmon in any Sunday through the following Thursday period - Sundays through Thursdays only, ((August 3)) July 19 through September ((24)) 30, except closed 0-3 miles offshore August 22 through September 30 and Catch Record Card Area 2-2 west of the Buoy 13 line closed during this period.

(3) Grays Harbor (Catch Record Card Area 2-2 east of the Buoy 13 line) (a) Special daily limit of six salmon, not more than ((one)) two of which may be ((an)) adult salmon except release adult chinook - ((August)) September 16 through ((January)) October 31 ((east of the Buoy 8 line. (b) Special daily limit of six salmon, not more than one of which may be an adult salmon, except release chum and wild coho salmon September 1 through September 30: Waters of Catch Record Card Area 2-2 east of the Channel Marker 13 Line)). Single point barbless hooks required.

Westport Boat Basin: Special daily limit of six salmon not more than four of which may be adult salmon - August 16 through January 31. Barbed hooks are allowed.

((Twenty Eighth Street Landing: Special daily limit of six salmon not more than one of which may be an adult salmon, except release chum and wild coho salmon October 1 through October 31: Within posted markers at the Twenty Eighth Street Landing at Ocean Shores. Single point barbless hooks required.))

(4) Willapa Bay (Catch Record Card Area 2-1) Special daily limit of six salmon, not more than ((three)) two of which may be adult salmon and release wild coho salmon - August 16 through January 31. Single point barbless hooks required.

(5) Catch Record Card Area 3 - Special daily limit of two salmon except release wild coho salmon - ((August 3)) July 19 through September ((24)) 30.

(6) Catch Record Card Area 4 - ((a) Waters west of the Bonilla-Tatoosh line - Closed to salmon angling the entire year. (b) Waters east of the Bonilla-Tatoosh line:)) Special daily limit of two salmon except release chinook salmon and release wild coho salmon - ((August 3)) July 19 through September ((24)) 30.

(7) ((Unless otherwise provided for in this section,)) Minimum size 24 inches for chinook salmon and 16 inches for coho salmon except minimum size 12 inches for chinook and coho salmon in Areas 2-1, 2-2 and the Westport Boat Basin. No minimum size for other salmon.

(8) For purposes of this section, adult chinook salmon are 24 inches or greater in length and adult coho salmon are 20 inches or greater in length.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-56-191 Puget Sound salmon—Saltwater seasons and daily limits. It is unlawful to fish for or possess salmon taken by angling for personal use except from the following Puget Sound areas, during the seasons, in the quantities, sizes, and for the species designated in this section and as defined in the daily limit codes in WAC 220-56-180. Puget Sound waters west of the mouth of the Sekiu River are managed concurrent with ocean waters as provided for in WAC 220-56-190. In all fisheries provided for in this section, chinook salmon minimum size 22 inches and no minimum size for other salmon.

(1) Catch Record Card Areas 5 and 6 -

(a) August 1 through September ((7)) 30, special daily limit of 2 salmon, except release chinook ((and)) chum and wild coho salmon.

(b) ((September 8 through September 30—Catch and release only)) Dungeness Bay inside a line from Dungeness Spit Light to the No. 2 red buoy and then to the Port Williams boat ramp open only October 1 through October 31 - Special daily limit of 2 coho salmon, release all salmon except coho salmon.

(c) November 1 through November 30 - Special daily limit of 2 salmon of which no more than one may be a chinook salmon and release all coho salmon.

(d) February 16 through April 10 - Special daily limit of 1 salmon.

(2) Catch Record Card Area 7:

(a) July 1 through ((August 15—Special daily limit of 2 salmon except release chinook salmon.))

((b) August 16 through)) September 30 - Special daily limit of 2 salmon, not more than 1 of which may be a chinook salmon.

((e))) (b) October 1 through October 31 - Special daily limit of 2 salmon, except release chinook salmon.

((d))) (c) November 1 through November 30 - Special daily limit of 2 salmon, no more than one of which may be a chinook salmon.

(d) February 16 through April 10 - Special daily limit of one salmon.

(e) Notwithstanding the provisions of this subsection during the period August 16 through October 31 the special daily limit in Bellingham Bay and adjacent waters described in WAC 220-56-195(1) is 4 salmon no more than 1 of which may be chinook.

(3) Catch Record Card Area 8-1:

(a) ((August 16)) September 1 through October 31 - Special daily limit of 2 salmon except release chinook and pink salmon.

(b) November 1 through November 30 - Special daily limit of 2 salmon, not more than 1 of which may be a chinook salmon.

(c) February 16 through April 10 - Special daily limit of one salmon.

(4) Catch Record Card Area 8-2:

(a) August 1 through October 31 - Special daily limit of 2 salmon except release chinook salmon.

(b) Waters adjacent to Tulalip Bay west of a line from Mission Point to Hermosa Point and within 2,000 feet of shore between pilings at Old Bower's Resort on the south and a fishing marker 1.4 miles northwest of Hermosa Point open only 12:01 a.m. each Friday through 11:59 a.m. the following Monday, August 1 through September 30. Special daily limit of 2 salmon not more than 1 of which may be a chinook salmon.

(c) February 16 through April 10 - Special daily limit of one salmon.

(5) Catch Record Card Area 9:

(a) August 1 through October 31 - Special daily limit of 2 salmon except release chinook salmon the entire time and release chum salmon August 1 through ((October 15)) September 30.

(b) November 1 through November 30 - Special daily limit of 2 salmon not more than one of which may be a chinook salmon.

(c) Notwithstanding the provisions of this subsection, salmon fishing is permitted year-round from the Edmonds Fishing Pier - Special daily limit of 2 salmon not more than one of which may be a chinook salmon.

(d) Notwithstanding the provisions of this section, salmon fishing is permitted May 1 through June 30 and August 1 through April 30 from the Hood Canal Bridge Fishing pontoon - Special daily limit of 2 salmon not more than one of which may be a chinook salmon, and release chum salmon August 1 through September 30, and release chinook August 1 through August 31.

(e) February 16 through April 10 - Special daily limit of one salmon.

(6) Catch Record Card Area 10:

(a) July 1 through October 31 - Special daily limit of 2 salmon except release chinook salmon, and:

(i) During the period July 1 through ((September 15)) August 16, Elliott Bay east of a line from ((Fourmile rock)) West Point to Alki Point is closed, except waters east of a line from Pier 91 to Duwamish Head open noon August 6 to noon August 9 and noon August 13 to noon August 16 - Special daily limit of 2 salmon not more than one of which may be a chinook salmon. The 2-ounce weight restriction does not apply in this subsection.

(ii) During the period July 1 through October 31, Shilshole Bay east of a line from Meadow Point to West Point is closed.

(iii) During the period August 1 through September 30, waters of Sinclair Inlet and Port Orchard south of the Manette Bridge, south of a line projected true east from Illahee State Park and west of a line projected true south from Point White - Special daily limit of 2 salmon not more than one of which may be a chinook salmon. The 2-ounce weight restriction does not apply in this subsection.

(iv) During the period July 1 through August 31 waters east of a line from Point Wells to Meadow Point are closed.

(b) November 1 through November 30 - Special daily limit of 2 salmon, not more than one of which may be a chinook salmon.

((b))) (c) February 16 through April 10 - Special daily limit of one salmon.

(d) Notwithstanding the provisions of this subsection, salmon fishing is permitted year-round from the Elliott Bay public fishing pier at Terminal 86 and Seacrest Pier - Special daily limit of 2 salmon not more than one of which may be a chinook salmon.

(7) Catch Record Card Area 11((—May)).

(a) June 1 through November 30 - Daily limit of 2 salmon not more than one of which may be a chinook salmon and release pink salmon.

(b) February 16 through April 10 - Special daily limit of one salmon.

(c) Notwithstanding the provisions of this subsection, salmon fishing is permitted year-round from the Dash Point Dock and the Point Defiance Boathouse Dock - Special daily limit of 2 salmon, not more than one of which may be a chinook salmon.

(8) Catch Record Card Area 12:

(a) July 1 through ((October 15—Special daily limit of 4 salmon, except release chum and chinook salmon.))

(b) October 16 through December 31 - Special daily limit of 4 salmon, not more than one of which may be a chinook salmon.) August 31 in waters south of Ayock Point - Special daily limit of 2 salmon, not more than one of which may be a chinook salmon and release chum and pink salmon.

(b) August 1 through August 31 in waters north of Ayock Point - Special daily limit of 4 salmon except release chinook, chum and pink salmon.

(c) September 1 through October 15 - Special daily limit of 4 salmon except release chinook, chum and pink salmon.

(d) October 16 through December 31 - Special daily limit of 4 salmon, not more than one of which may be a chinook salmon.

(e) February 16 through April 10 - Special daily limit of 1 salmon.

((e)) (f) Waters of the Hood Sport Hatchery Zone are managed separately as provided for in WAC 220-56-124.

((d)) Notwithstanding the provisions of this subsection, salmon fishing is permitted year round while fishing from)

(g) The Hood Canal Bridge fishing pier((- Special daily limit of 2 salmon not more than one of which may be a chinook salmon)) is managed under Area 9.

(9) Catch Record Card Area 13((--));

(a) May 1 through December 31 - Special daily limit of 2 salmon not more than one of which may be a chinook salmon and release wild coho salmon July 1 through October 31.

(b) January 1 through February 15 - Release all salmon.

(c) February 16 through April 10 - Special daily limit of one salmon.

(d) Notwithstanding the provisions of this section, salmon fishing is permitted year-round from the Fox Island Public Fishing Pier - Special daily limit of 2 salmon, not more than one of which may be a chinook salmon and release wild coho salmon July 1 through October 31.

(10) In the above waters there are specified closures as provided for in WAC 220-56-128 and 220-56-195. Additionally, there are gear and area restrictions at Shilshole Bay, the Duwamish Waterway, and Budd Inlet, and at Titlow Beach and the Edmonds underwater park and the Elliott Bay, Les Davis, and Des Moines public fishing piers. See specific sections in chapter 220-56 WAC for salmon angling restrictions at these locations.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-56-195 Closed areas—Saltwater salmon angling. The following areas shall be closed to salmon angling during the times indicated:

(1) ((Skagit Bay: Those waters lying easterly of a line projected from West Point on Whidbey Island to Reservation Head on Fidalgo Island, northerly of a line projected from Polnell Point to Rocky Point, northerly of the state Highway 532 Bridge between Camano Island and the mainland and south of a line between the south end of McGlinn Island and the light at the south end of Fidalgo Island (Qk Fl) at the south end of Swinomish Slough shall be closed to salmon angling April 16 through June 15.

((2))) Bellingham Bay: Those waters of Bellingham, Samish and Padilla Bays southerly of a line projected from

the most westerly point of Gooseberry Point to Sandy Point, easterly of a line from Sandy Point to Point Migley thence along the eastern shoreline of Lummi Island to Carter Point thence to the most northerly tip of Vendovi Island thence to Clark Point on Guemes Island thence following the shoreline to ((Southeast Point on Guemes Island thence to March Point on Fidalgo Island)) Yellow Bluff on the southwest corner of Guemes Island thence to Yellow Bluff Reef range marker thence to the ferry terminal dock east of Shannon Point and north of the Burlington Railroad Bridges at the north end of Swinomish Slough shall be closed to salmon angling ((April 16)) July 1 through ((July 31)) August 15.

((3))) (2) Carr Inlet:

(a) Those waters north of a line from Green Point to Penrose Point are closed to salmon angling April 16 through July 31.

(b) Those waters of Carr Inlet within 1,000 feet of the outer oyster stakes at the mouth of Minter Creek are closed to salmon angling April 16 through September 30.

((4))) (3) Dungeness Bay: Those waters westerly of a line from Dungeness Spit Light to the number 2 red buoy, and then to the Port Williams boat ramp are closed to salmon angling April 16 through September 30 and November 1 through April 15.

((5))) (4) Samish Bay: Those waters southerly of a line projected true east from Fish Point are closed to salmon angling August 1 through October 15.

((6))) (5) Columbia River Mouth Control Zone 1: Washington waters within Control Zone 1, which Control Zone is described as ((the ocean area surrounding the Columbia River mouth west of the Buoy 10 line and bounded by a line extending for 6 nautical miles due west from North Head along 46°18'00" N. latitude to 124°13'18" W. longitude, then southerly along a line of 16° true to 46°11'06" N. latitude and 124°11'00" W. longitude (Columbia River Buoy), then northeast along Red Buoy Line to the tip of the south jetty)) an area at the Columbia River mouth bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13'35" N/124°06'50" W) and the green lighted Buoy #7 (46°15'09" N/124°06'16" W); on the east by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14'00" N/124°03'07" W to its intersection with the north jetty; on the north by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°14'48" N/124°05'20" W) and then along the north jetty to the point of intersection with the Buoy #10 line; and on the south by a line running northeast/southwest between the red lighted Buoy #4 and the tip of the south jetty (46°14'03" N/124°04'05" W) and then along the south jetty to the point of intersection with the Buoy #10 line are closed to salmon angling at all times except open to fishing from the north jetty when adjacent waters north of the Control Zone are open to salmon angling or the Buoy 10 fishery is open.

((7))) (6) Commencement Bay: Those waters east of a line projected from the Sperry Ocean Dock to landfall below the Cliff House Restaurant on the north shore of Commencement Bay are closed ((April 16)) June 1 through July 31 and April 1 through April 10.

((8)) (7) Whidbey Island and mainland shores in Areas 5 and 6. Those waters of Catch Record Card Areas 5 and 6 within 3/4 mile of the shores of the mainland and Whidbey Island are closed to salmon angling August 1 through ((September 30)) August 31 when angling from boats.

((9)) (8) Rosario Strait and eastern Strait of Juan de Fuca: ((July 1 through September 30 the following areas are closed to salmon angling:))

(a) ((Southeastern Rosario Strait (Deception Pass to Shannon Pt.)—Waters within 1500 feet of Fidalgo Island from the Initiative 77 marker northeast of Northwest Island to Biz Point; and waters of Burrows Bay inside a line from Biz Point to Williamson Rocks Buoy to the Dennis Shoal Buoy, to a point 1500 feet west of the Burrows Island Light, then northeast to Fidalgo Head; and waters within 1500 feet of Fidalgo Island from Fidalgo Head to Shannon Point.)) Waters of Area 7 in Rosario Strait and the eastern portion of the Strait of Juan de Fuca southerly of a line running from Sandy Point to Point Migley on Lummi Island, and following the westerly shore of Lummi Island to a line running from Lawrence Point on Orcas Island through Lummi Rocks Buoy, then from Lawrence Point along the southeasterly shore of Orcas Island to Deer Point, then true south to Blakely Island, and south along the Blakely Island shore to the southernmost point on Blakely Island, then across Thatcher Pass to Fauntleroy Point, then along the eastern shore of Decatur Island to the southernmost point on Decatur Island, then across Lopez Pass to Lopez Island and following the shore of Lopez Island southerly and westerly to Iceberg Point, then from Iceberg Point to Cattle Point, then south southwest to the Salmon Bank Buoy, and then true west from Salmon Bank Buoy to the Area 7 boundary - Closed to fishing for salmon August 1 - September 30.

(b) ((Southwestern Rosario Strait (east side of Lopez Island, Decatur Island, and James Island)—Waters within

1500 feet of Lopez Island bounded by a line running from Point Colville due south 1500 feet then northerly along the island, across Lopez Pass, and then northerly along Decatur Island within 1500 feet of shore to Fauntleroy Point, including waters within 1500 feet of James Island.)) Waters of Area 7 in Rosario Strait and the eastern portion of the Strait of Juan de Fuca southerly of a line running true south from the westernmost point on Fidalgo Head to Burrows Island, then westerly and southerly along the shore of Burrows Island to the Burrows Island Lighthouse, then to the Bird Rocks Buoy, then true west from Bird Rocks Buoy to Decatur Island, and then along the eastern shore of Decatur Island to the southernmost point on Decatur Island, then across Lopez Pass to Lopez Island and following the shore of Lopez Island southerly and westerly to Iceberg Point, then from Iceberg Point to Cattle Point, then south southwest to the Salmon Bank Buoy, and then true west from the Salmon Bank Buoy to the Area 7 boundary - Closed to fishing for salmon August 1 - September 30.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-56-205 Hook rules—Nonbuoyant lures and night closures. It is unlawful to fish for or to possess ((salmon)) any species of fish taken for personal use from freshwater unless the hooks used meet the requirements of this section and it is unlawful to fish from one hour after official sunset to one hour before official sunrise during the periods shown:

(1) Nonbuoyant lure restriction: In the following waters and during the periods shown, it is unlawful to use a nonbuoyant lure that has more than one single hook or has a hook measuring more than 3/4 inch point to shank:

Area	Time period
Naselle River ((including all forks))	
<u>Mainstem-Hwy 101 Bridge to North Fork</u>	September 1-November 30
<u>South Fork-Mouth to Beam Creek</u>	<u>September 1-November 30</u>
Willapa River	
Mouth to Hwy 6 Bridge	October 1-November 30
Hwy 6 Bridge to Fork Creek	September 1-November 30
Upstream from Fork Creek	September 1-October 31
Willapa River (South Fork)	September 1-November 30
Humptulips River	September 1-November 30
Satsop River (including all forks)	September 1-November 30
Nemah River-North Fork	October 1-November 30
Nemah River-Middle Fork	September 1-November 30
((Dungeness and Gray Wolf Rivers	August 1-October 15))
Kennedy Creek	October 1-December 31
Nooksack River-South	
Fork Mouth to Skookum Creek	August 1-October 31
((Big Quileute River	<u>August 1-December 31))</u>

Area	Time period
<u>Mainstem</u>	<u>August 1-November 30</u>
<u>North Fork mouth to Maple Creek</u>	<u>August 1-November 30</u>
Samish River	
<u>Mouth to Hickson Bridge</u>	<u>August 1-December 31</u>
Stillaguamish River ((including all forks))	<u>August 1-November 30))</u>
<u>Mainstem downstream from Warm Beach Stanwood</u>	<u>August 1-November 30</u>
<u>Highway, North Fork and South Fork</u>	<u>August 1-November 30</u>
Whatcom Creek	
Cowlitz River	
From Mill Creek to Barrier Dam	((<u>August</u>)) <u>April 1-October 31</u>
Kalama River	
Mouth to temporary rack	<u>September 1-October 31</u>
Lewis River-North Fork	
From Johnson Creek to	
Merwin Dam	<u>April 1-October 31</u>
Washougal River	
Downstream of Salmon Falls Bridge	<u>September 1-October 31</u>
Icicle River	
From Leavenworth Federal Fish Hatchery to mouth	((<u>May 8</u>)) <u>June 1-June 30</u>
((<u>Wenatchee River</u>))	
From mouth of Icicle River to Highway 2 Bridge	<u>May 8-June 15))</u>
Skagit River (and tributaries)	
Upstream of Gilligan Creek	<u>July 1-November 30</u>
Tokul Creek	
From mouth to posted cable markers	<u>5:00 p.m. to 7:00 a.m., nightly,</u> <u>December 1-March 31</u>
Capitol Lake	
Deschutes River	
From 400 feet below lowest Tumwater Falls fish ladder to the Old Hwy 99 Bridge on Capitol Boulevard	<u>August 1-November 30</u>
Elochoman River	
<u>Mouth to west fork</u>	<u>September 1- October 31</u>
Grays River	
<u>Mouth to south fork</u>	<u>September 1- October 31</u>
Green/Duwanish River	
mouth to ((<u>State Route 167 Bridge</u>)) <u>Headworks Dam</u>	<u>August 1-November 30</u>
McAllister Creek	
Nisqually River	
Puyallup River	
mouth to Carbon River	<u>August 1-November 30</u>
Skykomish River (including all forks)	<u>August 1-November 30</u>
Snohomish River	
White/Stuck River	
Toutle River-North Fork	
Highway 504 Bridge near Kidd Valley to mouth of Green River	<u>September 1-October 31</u>
Green River (Cowlitz Co.)	
mouth to ((<u>1500</u>)) <u>400</u> feet below hatchery rack	<u>September 1-October 31</u>
((<u>Sees Creek</u>))	<u>September 1-October 31))</u>

(2) No leads, weights or sinkers may be attached below or less than 12 inches above a buoyant lure.

(3) All hooks must be attached within three inches of the bait or lure.

AMENDATORY SECTION (Amending Order 98-119, filed 7/7/98, effective 8/7/98)

WAC 220-56-235 Possession limits—Bottomfish. It is unlawful for any person to take in any day more than the following quantities of bottomfish for personal use. The possession limit at any time shall not exceed the equivalent of two daily limits in fresh, frozen or processed form. Unless otherwise provided bottomfish fishing is open the entire year.

(1) Coastal (Catch Record Card Areas 1 through 4):

(a) Lingcod (>):

(i) ~~3 fish minimum length 24 inches in Catch Record Card Areas 1 through 3 and Area 4 west of the Bonilla-Tatoosh line;~~

(ii) ~~2 fish minimum length 24 inches ((in Catch Record Card Area 4 east of the Bonilla-Tatoosh line)).~~

(b) Rockfish - 10 fish.

(c) Surfperch (excluding shiner perch) - 15 fish.

(d) Wolf-eel - 2 fish east of the Bonilla-Tatoosh line.

(e) Cabezon - 2 fish east of the Bonilla-Tatoosh line.

(f) All other species - no limit.

(2) Inner Puget Sound (Catch Record Card Areas 5 through 13):

(a) Catch Record Card Areas 5 and 6 - 15 fish in the aggregate of all species and species groups of bottomfish, which may include no more than:

Rockfish	5 fish
Surfperch	10 fish
Pacific cod	2 fish
Pollock	2 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	2 fish
Cabezon	2 fish

(b) Catch Record Card Area 7 - 15 fish in the aggregate of all species of bottomfish, which may include no more than:

Rockfish	5 fish
Surfperch	10 fish
Pacific cod	2 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	0 fish
Cabezon	2 fish
Pollock	2 fish

(c) Catch Record Card Areas 8-1 through 13 - 15 fish in the aggregate of all species and species groups of bottomfish, which may include no more than:

Rockfish	3 fish
Surfperch	10 fish

Pacific cod	0 fish
Pollock	0 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	0 fish
Cabezon	2 fish

(d) It is unlawful to possess lingcod taken by angling less than 26 inches in length or greater than 40 inches in length.

(e) The daily limit taken by spear fishing may include no more than one lingcod. There is no size restriction on the one lingcod allowed in the daily limit if taken by spear fishing.

(f) It is unlawful to retain cabezon taken from Catch Record Card Areas 5 through 13 from December 1 through April 30.

AMENDATORY SECTION (Amending Order 99-13, filed 3/30/99, effective 5/1/99)

WAC 220-56-255 Halibut—((Season)) Seasons—Daily and possession limits. (1) It is unlawful to fish for or possess halibut taken for personal use except from:

((1)) (a) Catch Record Card Area 1: Open May 1 through September 30, unless closed earlier by emergency regulation. Minimum size limit 32 inches in length.

((2)) (b) Catch Record Card Area 2((—)):

(i) Those waters south of the Queets River, north of 47° and east of 124°40'W - Open May 2 through September 30, unless closed earlier by emergency regulation.

(ii) All other open waters in Area 2 - Open May 2 through September 30, unless closed to fishing for halibut 12:01 a.m. of each Friday through 11:59 p.m. of each Saturday. ((If May 1 occurs on a closed day, the season opens on the first Sunday following.))

(iii) The following waters are closed to halibut fishing: ((West of 124°40'W, north of 47°10'N and south of 47°31'42"N (Queets River))) Inside a rectangle defined by the following four corners: 47°19'0"N, 124°53'0"W; 47°19'00"N, 124°48'0"W; 47°16'0"N, 124°53'0"W; 47°16'0"N, 124°48'0"W.

((3)) (c) Catch Record Card Area 3 and those waters of Catch Record Card Area 4 west of the Bonilla-Tatoosh line: Open May 1 ((to June 30, unless closed earlier by emergency regulation, and July 1)) through September 30 unless closed by emergency regulation. Closed to fishing for halibut 12:01 a.m. of each Sunday through 11:59 p.m. of each Monday. ((If May 1 occurs on a closed day, the season opens on the first Tuesday following.)) The following area southwest of Cape Flattery is closed to halibut fishing at all times:

Those waters within a ((line from)) a rectangle defined by the following four corners: 48°18'N, 125°11'W ((to)); 48°18'N, 124°59'W ((to)); 48°04'N, 125°11'W ((to)); 48°04'N, 124°59'W ((to the point of origin)).

((4)) (d) Catch Record Card Area 4 east of the Bonilla-Tatoosh line and Catch Record Card Areas 5 through 13: May ((24)) 27 through ((August 3)) July 12 - Closed 12:01

a.m. Tuesday through 11:59 p.m. Wednesday of each week during the open period.

(2) Daily limit one halibut. The daily limit in Area 1 is the first halibut over 32 inches in length brought aboard the vessel.

(3) The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

AMENDATORY SECTION (Amending Order 99-13, filed 3/30/99, effective 5/1/99)

WAC 220-56-310 Shellfish—Daily limits. It is unlawful for any one person to take in any one day for personal use more than the following quantities and sizes of shellfish:

(1) Cockles, borers and clams in the shell, other than razor clams, geoduck clams and horse clams, 40 clams in the aggregate, or 10 pounds, whichever is achieved first except:

(a) In Skagit Bay, east of a line projected from Browns Point to Swinomish Slough entrance - diggers may additionally retain up to 20 pounds of eastern softshell clams in the shell.

(b) Willapa Bay - diggers may additionally retain up to twenty-four cockles.

(2) Razor clams: 15 clams.

(3) Geoduck clams: 3 clams.

(4) Horse clams: 7 clams.

(5) Oysters:

(a) In all Puget Sound waters except those contiguous waters south of a line from Tala Point to Foulweather Bluff, 18 oysters in the shell, minimum size 2 1/2 inches across the longest dimension of the shell.

(b) In the Puget Sound contiguous waters south of a line from Tala Point to Foulweather Bluff and waters of the Pacific Ocean, Grays Harbor and Willapa Bay, 18 oysters, shucked and the shells left on the beach.

(6) Rock scallops: 12 scallops.

(7) Sea scallops: 12 scallops (over 4 inches).

(8) Common or pink scallops: 10 pounds or 5 quarts in the shell.

(9) Shrimp:

(a) In all waters except Shrimp Districts 1 and 5 - total weight 10 pounds, fishers must retain the heads of all shrimp taken while in the field. Spot shrimp minimum size one and three-sixteenths inch from the base of the eyestalk to the top rear edge of the carapace.

(b) In shrimp district 1 (Discovery Bay) - Spot shrimp: Maximum 50 shrimp as part of the 10 pound limit. Spot shrimp minimum size one and three-sixteenths inch from base of eyestalk to top rear edge of carapace.

(c) In Shrimp District 5 (Hood Canal) - ((7 pounds, whole in the shell)) 80 shrimp. No minimum size for spot shrimp.

(10) Octopus: 2 octopus.

(11) Pinto abalone: Closed state-wide.

(12) Crawfish: 10 pounds in the shell. Minimum size 3 1/4 inches from tip of rostrum to tip of tail. Female crawfish with eggs or young attached to the abdomen must be released immediately.

(13) Squid: 10 pounds or 5 quarts.

(14) Sea cucumbers: 25 sea cucumbers.

(15) Red sea urchins: 18 sea urchins.

(16) Purple sea urchins: 18 sea urchins.

(17) Green sea urchins: 36 sea urchins.

(18) Dungeness crabs:

(a) In all waters except the Columbia River - 6 male crabs.

(b) In the Columbia River - 12 male crabs.

(19) Red rock crabs: 6 crabs.

(20) Blue mussels and sea mussels: 10 pounds in the shell.

(21) Goose barnacles: 10 pounds of whole barnacles or 5 pounds of barnacle stalks.

(22) Ghost and mud shrimp: 10 dozen.

(23) King and box crab: Closed state-wide.

AMENDATORY SECTION (Amending WSR 98-06-031, filed 2/26/98, effective 5/1/98)

WAC 220-56-325 Shrimp—Areas and seasons. (1)

The following areas shall be defined as personal use shrimp fishing Districts 1 through 6:

(a) Shrimp District 1 - All waters south of a line from McCurdy Point on the Quimper Peninsula to the northern tip of Protection Island, to Rocky Point on the Miller Peninsula, and including all waters of Discovery Bay;

(b) Shrimp District 2 - All waters of Griffin Bay south of a line projected east-west through Turn Rock Light from San Juan Island to Lopez Island, and north of a line projected east from Cattle Point on San Juan Island to Lopez Island;

(c) Shrimp District 3 - All waters of Port Angeles Harbor west of a line from the eastern tip of Ediz Hook to the ITT-Rayonier dock;

(d) Shrimp District 4 - All waters of Sequim Bay south of a line projected west from Travis Spit on the Miller Peninsula;

(e) Shrimp District 5 - All waters of Hood Canal south of the Hood Canal Floating Bridge;

(f) Shrimp District 6 - All waters of Carr Inlet north of a line from Penrose Point to Green Point.

(2) It shall be unlawful to fish for or possess shrimp taken for personal use from the following areas, except as otherwise provided in this ((subsektion)) section:

(a) District 1 - First Saturday in June through ((July 15)) September 5;

(b) District 2 - Second Saturday in ((May)) April through ((September)) October 15;

(c) District 3 - ((Second)) First Saturday in ((May)) June through September ((+15)) 30;

(d) District 4 - Closed to all shrimp fishing;

(e) District 5 - 9:00 a.m. on the third Saturday in May until closed by emergency regulation;

(f) District 6 - Closed to all shrimp fishing;

(g) All other areas - The second Saturday in April through October 15.

(3) Spot shrimp seasons:

(a) District 1 - First Saturday in June through third Saturday in August. Spot shrimp may be retained on Saturdays only.

(b) District 3 - First Saturday in June through first Saturday in September. Spot shrimp may be retained on Saturdays and Sundays only.

(c) All other open areas - Spot shrimp may be retained as part of the daily limit at all times.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-56-225 Freshwater angling hours.

WAC 220-56-245 Halibut—Daily and possession limits.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-57-120 Bear River. Daily Limit A except release wild adult coho salmon - July 1 through January 31: Downstream from the lime quarry road to Highway 101 Bridge (a distance of approximately 2 stream miles). Single point barbless hooks required.

AMENDATORY SECTION (Amending WSR 97-18-035, filed 8/27/97, effective 9/27/97)

WAC 220-57-135 Calawah River. Daily Limit A ((except release adult coho salmon)) - July 1 through November 30: Downstream from the Highway 101 Bridge. ((Single point barbless hooks required.))

AMENDATORY SECTION (Amending WSR 97-18-035, filed 8/27/97, effective 9/27/97)

WAC 220-57-137 Carbon River. Daily Limit A except up to 4 adult salmon may be retained, provided that not more than 2 are adult chinook and release all pink and chum salmon - September 1 through November 30 downstream from the mouth of Voight Creek.

AMENDATORY SECTION (Amending WSR 97-18-035, filed 8/27/97, effective 9/27/97)

WAC 220-57-13701 Cascade River. Special daily limit of 2 salmon except release wild coho - October 1 through November 30: Upstream from mouth to ((hatchery)) Rockport - Cascade road bridge.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-57-140 Chehalis River. (1) Daily Limit A - May ((16)) 1 through July ((15)) 31: Downstream from the high bridge on the Weyerhaeuser 1000 line approximately 400 yards downstream of Roger Creek.

(2) ((Special)) Daily Limit ((of six salmon except no more than one adult salmon may be retained and)) A except release ((all chum and release wild coho)) adult chinook - ((September 16 through September 30)) October 1 through

November 15: Downstream from ((the high bridge to the Fuller)) Porter Bridge. Single point barbless hooks required.

(3) ((Special)) Daily Limit ((of six salmon except no more than one adult salmon may be retained and)) A except release ((chum and wild coho salmon)) adult chinook - October ((1 through October 31)) 16 through November 15: Downstream from the high bridge to the Porter Bridge. Single point barbless hooks required.

(4) ((Special)) Daily Limit ((of six salmon except no more than one adult salmon may be retained and)) A except release adult chinook((, chum)) and wild adult coho salmon - ((October 1 through October 31)) November 16 through January 31: Downstream from the ((Porter)) High Bridge. ((Single point barbless hooks required.))

AMENDATORY SECTION (Amending Order 79-7, filed 1/30/79, effective 4/1/79)

WAC 220-57-145 Cispus River. ((Closed to salmon angling the entire year.)) Daily Limit A except release wild coho salmon. Open year-round. Eight-inch minimum size.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-57-155 Clearwater River (Jefferson County). Daily Limit A except release wild adult coho salmon - September 1 through November 30: Downstream from the mouth of the Snahapish River. Single point barbless hooks required.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-57-160 Columbia River. (1) Rocky Reach Dam to Priest Rapids Dam: Daily Limit A except release wild coho salmon - September 16 through December 31.

(2) Priest Rapids Dam to the Vernita Bridge: Daily Limit A except release wild coho salmon - August 16 through October 31; Daily Limit C except release wild coho salmon - November 1 through December 31.

(3) Vernita Bridge to old Hanford townsite wooden power line towers: Daily Limit A except release wild coho salmon - August 16 through October 22.

(4) Old Hanford townsite wooden power line towers to Highway 395 Bridge connecting Pasco and Kennewick: Daily Limit A except release wild coho salmon - August 16 through December 31.

(5) Highway 395 Bridge to ((McNary Dam: Daily Limit A - August 1 through December 31. It is unlawful to take or possess sockeye or chum salmon taken downstream of the Highway 395 Bridge to McNary Dam.))

(6) ((McNary Dam to)) Interstate 5 Bridge: Daily Limit A - August 1 through December 31. It is unlawful to take or possess sockeye ((or)), chum salmon or wild coho salmon taken downstream from ((McNary Dam)) the Highway 395 Bridge to the Interstate 5 Bridge.

((7)) (6) Interstate 5 Bridge to the Megler-Astoria Bridge: Daily Limit A - August 1 through March 31 ((except release all coho October 1 through March 31)). August 1

through December 31 release all chinook within the area of the mainstem Columbia as follows: Beginning at a fishing boundary marker on the northern (downstream) end of Bachelor Island, northwesterly to the lighthouse at Warrior Rock, north to Sand Island, along the east side of Sand Island to the northern (downstream) tip of the island, northwesterly approximately 1/2 mile to a navigation marker in the middle of the river, and northeasterly to Marker #77 on the Washington shore. During September, it is unlawful to fish for or possess salmon taken for personal use in those waters of the Columbia River north of a line from Abernathy Point Light to a boundary marker east of the mouth of Abernathy Creek. It is unlawful to take or possess sockeye, chum, or wild coho salmon taken downstream from the Interstate 5 Bridge to the Megler-Astoria Bridge.

((8)) (7) Megler-Astoria Bridge to the Buoy 10 Line:

(a) ((Daily Limit F)) Special daily limit of 2 salmon except release sockeye, chum, wild coho salmon and chinook salmon less than 24 inches in length - August ((8 through August 23)) 1 through September 30.

(b) Daily Limit A except release sockeye, chum and wild coho - ((January)) October 1 through March 31.

((e)) It is unlawful to take or possess sockeye, chum or wild coho salmon taken downstream from the Megler-Astoria Bridge to the Buoy 10 Line.

((9)) (8) North Jetty (mouth of Columbia River): Open to angling from the bank only when state waters north of the control zone are open to salmon angling. During such periods fishing from the north jetty is open 7 days per week and the daily limit shall be the same as for the ocean waters when open. Also open to angling from the bank only concurrent with the Buoy 10 fishery. Daily limit and gear requirement will be identical with those in the Buoy 10 fishery. It is unlawful to take or possess sockeye or chum salmon taken from the North Jetty.

AMENDATORY SECTION (Amending Order 97-202, filed 9/25/97, effective 10/26/97)

WAC 220-57-165 Copalis River. ((Closed to salmon angling the entire year.)) Daily Limit A - July 1 through January 31: Downstream from Carlisle Bridge.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-57-175 Cowlitz River. (1) Special Daily Limit ((A except release chum and wild coho)) of one salmon - ((January)) May 1 through ((April 30)) July 31: Downstream from fishing boundary markers approximately 400 feet below barrier dam structures at the Cowlitz Salmon Hatchery Barrier Dam except closed to fishing from south bank May 1 through June 15 downstream to mouth of Mill Creek.

(2) Daily Limit A except release chum and wild coho salmon - August 1 through April 30. Only one adult chinook August 1 through December 31. Release chinook over 28 inches October 1 through December 31 from Mill Creek to Blue Creek.

(3) Spring chinook season limit: A total of 5 salmon may be taken from the Cowlitz River during each April 1st through the following July 31st.

(4) Salmon angling from boats is prohibited the entire year in designated open waters between the barrier dam and a line from the mouth of Mill Creek to a boundary marker on the opposite shore.

((3)) (5) Daily Limit A except minimum size of 8 inches and release wild coho salmon - open the entire year: From the confluence of the Muddy Fork and Ohanapecosh rivers downstream to Scanewa Lake (Cowlitz Falls Reservoir).

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-57-187 Deep River (Wahkiakum County). Deep River (Wahkiakum County) - Daily Limit C - June 1 through July 31: Downstream from town bridge. Daily Limit A except release wild coho and 14-inch minimum size - August 1 through December 31: Downstream from town bridge.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-57-200 Dickey River. ((Special)) Daily Limit ((of two salmon)) A - July 1 through November 30: Downstream of the mouth of east fork of the Dickey River to the National Park boundary.

AMENDATORY SECTION (Amending WSR 97-18-035, filed 8/27/97, effective 9/27/97)

WAC 220-57-230 Elk River. ((Closed to salmon angling the entire year.)) Daily Limit A, except release adult chinook - October 1 through November 30: Downstream from the confluence of the east and middle branches. Single point barbless hooks required.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-57-235 Elochoman River. ((Closed to salmon angling the entire year.)) Daily Limit A, except release chum and wild coho - September 1 through December 31: Downstream of the west fork. October 1 through December 31 release chinook greater than 28 inches in length downstream from west fork to the Foster (Risk) Road Bridge. Closed waters - from WDFW temporary rack downstream to Foster (Risk) Road Bridge while rack is installed in river; from a point 50' above to 100' below the outlet pipes from the most downstream Elochoman Hatchery rearing pond and extending 30' out from the south bank of the river; from 100' above the upper hatchery rack downstream to the Elochoman Hatchery Bridge located 400' below the upper hatchery rack.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-57-250 Grays River. ((Closed to salmon angling the entire year.)) Daily Limit A, except release chum and wild coho salmon - September 1 through October 31: Downstream from the south fork. October 1 through October 31 - Release chinook salmon greater than 28 inches in length downstream from south fork to the covered bridge.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-57-255 Green River (Cowlitz County). ((Closed to salmon angling the entire year.)) Daily Limit A - May 1 through May 31: Downstream from 400 feet below the Green River Hatchery upper water intake.

Daily Limit A - June 1 through July 31.

Daily Limit A, except release chum and wild coho and no more than one adult chinook may be retained - August 1 through November 30. October 1 through November 30 release chinook greater than 28 inches in length. Closed waters: All tributaries, mainstem source downstream to 2800 Bridge, all waters within 400 feet of hatchery rack when installed and September 1 through November 30 all waters within 400 feet of water intake at the upper end of the hatchery.

AMENDATORY SECTION (Amending Order 95-46, filed 5/31/95, effective 7/1/95)

WAC 220-57-260 Green (Duwamish) River (King County). Special daily limit of two chum salmon - November 1 through December 31: Downstream from 400 feet below the Tacoma Headwork Dam to the Highway 18 Bridge. Daily Limit A except release chinook salmon - October ((+)) 16 through ((October 15)) December 31: Downstream from the Highway 18 Bridge to the Auburn Eighth Street N.E. Bridge ((to the Highway 405 Bridge)). Daily Limit A except release chinook salmon - October ((+6)) 1 through December 31: Downstream from the ((downstream side of the Highway 18 Bridge to the Highway 405)) Eighth Street Bridge.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-57-270 Hoh River. (1) Daily Limit C - ((May 16)) June 1 through August 31 ((except closed Monday and Tuesday of each week)): Downstream from the mouth of the south fork Hoh to the Morgan's Crossing boat launch, including Olympic National Park.

(2) ((Special)) Daily Limit ((of six salmon except no more than one adult salmon may be retained)) C - ((May 16)) June 1 through ((August 31 except closed Monday and Tuesday of each week)) October 15: Downstream from the Morgan's Crossing boat launch to the Highway 101 Bridge.

(3) ((Special)) Daily Limit A - October 16 through November 30: Downstream from Morgan's Crossing boat launch to the Highway 101 Bridge.

(4) Daily Limit ((of six salmon except no more than one adult salmon may be retained)) C - ((May 16)) June 1 through August 31 ((except closed Monday and Tuesday of each week)): Downstream from the Highway 101 Bridge.

((4)) (5) Daily Limit A - September 1 through November 30: Downstream from the Highway 101 Bridge.

AMENDATORY SECTION (Amending WSR 97-18-035, filed 8/27/97, effective 9/27/97)

WAC 220-57-280 Hoquiam River—All forks. ((Closed to salmon angling the entire year.)) Daily Limit A except release adult chinook - October 1 through November 15: Downstream from Dekay Road Bridge on west fork and downstream from flat car bridge near Berryman Creek on east fork. Single barbless hooks required.

Daily Limit A except release adult chinook and wild adult coho - November 16 through January 31: Downstream from Dekay Road Bridge on west fork and downstream from flat car bridge near Berryman Creek on east fork.

AMENDATORY SECTION (Amending WSR 97-18-035, filed 8/27/97, effective 9/27/97)

WAC 220-57-285 Humptulips River. Daily Limit A, except release adult chinook and wild adult coho - ((September)) October 1 through ((October 15)) November 30: Downstream from the ((Highway 101 Bridge)) confluence of east and west forks. Single point barbless hooks required.

AMENDATORY SECTION (Amending Order 95-46, filed 5/31/95, effective 7/1/95)

WAC 220-57-295 Joe Creek (Grays Harbor County). Daily Limit A except release adult chinook - September 1 through November 30: Downstream from the Ocean Beach Road Bridge to the State Highway 109 Bridge ((, except that chinook salmon greater than 24 inches in length must be released immediately)). Single point barbless hooks required.

AMENDATORY SECTION (Amending WSR 97-18-035, filed 8/27/97, effective 9/27/97)

WAC 220-57-300 Johns River. ((Closed to salmon angling the entire year.)) Daily Limit A, except release adult chinook - October 1 through November 30: Downstream from Balloon Creek. Single point barbless hooks required.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-57-310 Kalama River. (1) Daily Limit A except release chum and wild coho salmon - ((January)) August 1 through April 30: Downstream from a point 1,000 feet below the fishway at the upper salmon hatchery. October 1 through December 31 release chinook over 28 inches in length downstream to natural gas pipeline crossing.

(2) Fishing from boats with motors is prohibited at all times in waters upstream of the Modrow Bridge.

AMENDATORY SECTION (Amending Order 95-46, filed 5/31/95, effective 7/1/95)

WAC 220-57-313 Kennedy Creek. ((Special)) Daily Limit A, except release coho - ((2 adult salmon -)) October 1 through November 30: Downstream from the Highway 101 Bridge to mouth. Barbless hooks only.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-57-315 Klickitat River. ((Special)) Daily Limit ((of one salmon)) C - June 1 through July 31: Downstream from fishing boundary markers at the downstream end of the Klickitat River Salmon Hatchery to 400 feet upstream from the No. 5 Fishway. ((Release adult chinook salmon upstream from the No. 5 Fishway.)) Daily Limit A - August 1 through November 30: Downstream from fishing boundary markers at the downstream end of the Klickitat River Salmon Hatchery to 400 feet upstream from the No. 5 Fishway.

Daily Limit A - June 1 through January 31: Downstream from Fisher Hill Bridge.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-57-319 Lewis River. (1) Mainstem((--)): (a) Special daily limit of one salmon - May 1 through July 31: Downstream from east fork to mouth.

(b) Daily Limit A except release chum and wild coho salmon ((January)) - August 1 through April 30: Downstream from east fork to mouth. August 1 through December 31 release chinook salmon.

(2) East fork: Closed waters.

(3) North fork:

(a) Daily Limit A except release chum, chinook and wild coho salmon - ((January)) August 1 through ((April)) September 30: Downstream from ((the overhead powerlines downstream from)) Merwin Dam to Colvin Creek.

(b) Daily Limit A except release chum and wild coho - January 1 through April 30: Downstream from Merwin Dam to Colvin Creek.

(c) Daily Limit A except release chum and wild coho - August 1 through April 30: Downstream from Colvin Creek to mouth. August 1 through December 31 release chinook salmon.

(d) Special daily limit of one salmon - May 1 through July 31: Downstream from Colvin Creek to mouth.

At all times it is unlawful to take, fish for or possess salmon taken for personal use from waters shoreward of the cable, buoy, and corkline located at the mouth of the Lewis River Salmon Hatchery Fishway.

(4) Spring chinook season limit: A total of 5 salmon may be taken from the Lewis River system during each April 1 through the following July 31st.

AMENDATORY SECTION (Amending Order 95-46, filed 5/31/95, effective 7/1/95)

WAC 220-57-321 Little White Salmon River (Drano Lake). Daily Limit A except release wild coho - August 1

through December 31: Downstream from markers downstream from federal salmon hatchery.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-57-335 Naselle River. (1) Daily Limit A except release wild adult coho salmon - July 1 through January 31: Downstream from the Highway 4 Bridge to Highway 101 Bridge. Single point barbless hooks required.

(2) Daily Limit A except release wild adult coho salmon - October 16 through January 31: Downstream from the Crown Mainline (Salme) Bridge to the Highway 4 Bridge. Single point barbless hooks required.

(3) Waters within 400 feet both upstream and downstream from the entrance to the Naselle Salmon Hatchery Attraction Channel are closed to salmon angling at all times.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-57-340 Nemah River. (1) Middle Nemah, Daily Limit A except release wild adult coho salmon - July 1 through January 31: Downstream from the department of natural resources bridge on the Middle Nemah A Line Road. Single point barbless hooks required.

(2) North Nemah - Daily Limit A except release wild adult coho salmon - October 1 through January 31: Downstream from lower bridge on dead end Lower Nemah Road to the mouth. Single point barbless hooks required.

(3) South Nemah - Daily Limit A except release wild adult coho salmon - July 1 through January 31: Downstream from the confluence of the Middle Nemah to the mouth. Single point barbless hooks required.

NEW SECTION

WAC 220-57-341 Newaukum River—Including south fork. Daily Limit A except release wild adult coho and adult chinook - November 16 through January 31: Downstream from Gheer Creek. Single point barbless hooks required.

AMENDATORY SECTION (Amending Order 95-46, filed 5/31/95, effective 7/1/95)

WAC 220-57-342 Niawiakum River. Daily Limit A except release wild adult coho - July 1 through January 31: Downstream from the South Bend-Palix Road Bridge. Single point barbless hooks required.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-57-350 Nooksack River. (1) Special daily limit ((A except up to 4 adult salmon may be retained provided no more than 2 are)) of two salmon except release chinook - September 1 through December 31: Downstream from the confluence of north and south forks to Lummi Indian Reservation boundary.

(2) North Fork - Special daily limit ((A)) of two salmon except release chinook - October 1 through ((November 30)) October 31: Downstream from Maple Creek to mouth of north fork.

(3) South Fork - Special daily limit ((A)) of two salmon except release chinook - October 1 through November 30: Downstream from ((the Saxon Bridge)) Skookum Creek to mouth of south fork. Selective gear rules.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-57-355 North River. Daily Limit A except release wild adult coho salmon - July 1 through January 31 - downstream from the mouth of Salmon Creek. Single point barbless hooks required.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-57-365 Palix River. Daily Limit A except release wild adult coho salmon - July 1 through January 31: Downstream from the confluence of the south and middle forks to the Highway 101 Bridge. Single point barbless hooks required.

AMENDATORY SECTION (Amending Order 93-20, filed 3/31/93, effective 5/1/93)

WAC 220-57-380 Quilcene (Big Quilcene) River. ((Closed to salmon angling the entire year.)) Special daily limit of 2 coho salmon - August 16 through October 31: Downstream from the Highway 101 Bridge to Rogers Street. Selective gear rules. Closed to fishing from one hour after official sunset to one hour before official sunrise.

AMENDATORY SECTION (Amending Order 95-46, filed 5/31/95, effective 7/1/95)

WAC 220-57-405 Samish River. Special daily limit ((A)) of 2 salmon - July 1 through October 15: Downstream from the Thomas Road Bridge to the Bayview-Edison Road Bridge. Special daily limit ((A)) of 2 salmon - October 16 through December 31: Downstream from Interstate 5 Bridge to the Bayview-Edison Road Bridge.

AMENDATORY SECTION (Amending WSR 97-18-035, filed 8/27/97, effective 9/27/97)

WAC 220-57-415 Satsop River—Mainstem and east fork. Daily Limit A except release adult chinook - October ((10)) 1 through ((November 2)) January 31: Downstream from the bridge at Schafer State Park on east fork. ((Single point barbless hooks required.)) November 16 through January 31 release wild adult coho.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-57-425 Skagit River. ((1) Special daily limit of 2 salmon except release ((eoh)) chinook salmon -

((November)) October 1 through December 31: Downstream from the ((mouth of the Cascade River)) pipeline crossing at Sedro Wooley.

((2) Special daily limit of 2 salmon except release chinook salmon - October 1 through November 30: Downstream from the Dalles Bridge at Concrete to the pipeline crossing at Sedro Wooley.

((3) Special daily limit of 2 chum salmon - November 1 through December 31: Downstream from the mouth of the Cascade River to the Dalles Bridge.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-57-430 Skokomish River. ((+)) Special daily limit of ((four salmon release chinook and chum salmon)) 6 salmon, not more than 4 of which may be adult salmon and of the adult salmon not more than one of which may be a chinook - ((September 16)) August 1 through ((October)) December 15: Downstream from the Highway 101 Bridge. August 1 through October 15 release chum.

((2) Special daily limit of four salmon except release chinook salmon - October 16 through December 15: Downstream from the Highway 101 Bridge.))

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-57-435 Skykomish River. Special daily limit of two salmon except release chinook in the entire river and release pink salmon downstream from the confluence of the north and south forks to the mouth of the Sultan River - ((October)) September 1 through December 31: Downstream from the confluence of north and south forks.

AMENDATORY SECTION (Amending Order 95-46, filed 5/31/95, effective 7/1/95)

WAC 220-57-440 Smith Creek (Pacific County). Daily Limit A except release wild adult coho - July 1 through January 31: Downstream from Highway 101 Bridge to the mouth. Single point barbless hooks required.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-57-450 Snohomish River. (1) Special daily limit of two salmon except release chinook ((and pink)) salmon - ((October)) September 1 through December 31: Downstream from confluence of Skykomish and Snoqualmie rivers.

(2) During even-numbered years it is unlawful to retain pink salmon.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-57-462 Soos Creek. Special daily limit of two salmon - September 1 through October 31: Downstream from the bridge near the hatchery residence. Only one single hook may be used. Open only to persons less than fifteen

years of age. Closed to fishing from one hour after official sunset to one hour before official sunrise.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-57-465 Stillaguamish River. Special daily limit of two ((chum)) salmon except release chinook and coho - ((November)) September 1 through December 31: Downstream from confluence of north and south forks except waters of Cook Slough are closed at all times from the water flow control structure to a point 400 feet downstream. From confluence to Warm Beach-Stanwood Highway - 14-inch minimum and closed to fishing from one hour after official sunset to one hour before official sunrise at all times. Selective gear rules September 1 through November 30.

AMENDATORY SECTION (Amending Order 91-41, filed 6/27/91, effective 7/28/91)

WAC 220-57-470 Tahuya River. ((Closed to salmon angling the entire year.)) Special daily limit of 2 coho - September 16 through October 31: Downstream from a marker approximately one mile above North Shore Road Bridge.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-57-480 Toutle River—North Fork. ((Closed to salmon angling the entire year.)) Daily Limit A, except no more than one adult chinook and release chum and wild coho - August 1 through November 30: Downstream from the posted deadline at the fish collection facility to the Highway 504 Bridge near Kidd Valley. October 1 through November 30 release chinook greater than 28 inches in length.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-57-495 Washougal River. Daily Limit A except release ((chum)) chum and wild coho salmon - ((January)) August 1 through March 15: (Downstream from bridge at Salmon Falls to mouth.) Upstream of the Little Washougal River - October 1 through December 31 release chinook greater than 28 inches in length.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-57-505 White Salmon River. (1) ((Special daily limit of one salmon - May 1 through June 15: Downstream from 400 feet below Condit Dam to the power house below Condit Dam.

((2))) Daily Limit A except release wild coho - November 16 through April 30: Downstream from 400 feet below Condit Dam to the power house below Condit Dam.

((3))) Special daily limit of one salmon - May 1 through July 31: Downstream from the power house below Condit Dam.

((4))) (2) Daily Limit A - August 1 through April 30 except release wild coho at all times and release adult salmon October 1 through December 31: Downstream from the power house below Condit Dam.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-57-510 Willapa River. (1) Daily Limit A except release wild adult coho salmon - July 1 through January 31: Downstream from Highway 6 Bridge, approximately 2 miles below the mouth of Trap Creek, to the department boat launch in South Bend. Single point barbless hooks required.

(2) Daily Limit A except release wild adult coho salmon - October 16 through January 31: Downstream from mouth of Fork Creek to the Highway 6 Bridge approximately 2 miles below the mouth of Trap Creek. Single point barbless hooks required.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-57-515 Wind River. (1) ((Special daily limit of one salmon - May 1 through June 15: Downstream from 400 feet below Shepherd Falls.

((2))) Daily Limit A except release wild coho - August 1 through October 31: Downstream from the Burlington Northern Railroad Bridge to the mouth.

AMENDATORY SECTION (Amending Order 95-46, filed 5/31/95, effective 7/1/95)

WAC 220-57-520 Wishkah River. Daily Limit A except release adult chinook - (July) October 1 through January 31: Downstream from the mouth of the west fork. November 16 through January 31 release wild adult coho. October 1 through November 15 single point barbless hooks required.

AMENDATORY SECTION (Amending Order 98-122, filed 7/15/98, effective 8/15/98)

WAC 220-57-525 Wynoochee River. ((Special)) Daily Limit ((of six salmon except no more than one adult salmon may be retained, and)) A except release ((chum and wild coho salmon)) adult chinook - ((September 16)) October 1 through ((October)) January 31: Downstream from the 7400 line bridge upstream of the mouth of Schafer Creek. October 1 through November 15 - single point barbless hooks required. November 16 through January 31 - release wild adult coho.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-57-220

Duquamish River.

AMENDATORY SECTION (Amending Order 99-13, filed 3/30/99, effective 5/1/99)

WAC 232-12-619 Permanent Washington state-wide game fish regulations. The following state-wide regulations apply to all waters unless modified under regional regulation exceptions.

(1) Fishing seasons open at 12:01 a.m. on the first day and close at 11:59 p.m. on the last day.

(2) It is unlawful to:

(a) Use a gaff hook to land game fish.

(b) Take bullfrogs except by angling, hand dip netting, spearing (gigging) or with bow and arrow.

(c) Feed or use any substance to attract game fish unless specifically authorized by special regulations.

(d) Fish for game fish with a bow and arrow or spear.

(e) Possess fish which are under the minimum size or over the maximum size as shown in general or special regional regulations.

(f)(i) It is unlawful to possess Dolly Varden/bull trout or sturgeon in the field in such condition that the total length cannot be determined.

(ii) It is unlawful to possess salmon or steelhead in the field in such condition that the total length and presence or absence of all fins cannot be determined.

(iii) It is unlawful to possess gamefish, food fish, or shellfish in the field in such condition that the size, weight or sex cannot be determined if a size, weight or sex restriction applies to the species. This subsection does not apply to gamefish, food fish, or shellfish if the fisher has stopped fishing for the day after the catch has been brought ashore, or if the catch is in the process of being prepared for immediate consumption. Dolly Varden/bull trout and sturgeon must comply with subsection (1) of this section at all times when in the field.

(3) Seasonal wild steelhead limit - steelhead trout only: Each angler who possesses a valid steelhead catch record card may not retain more than thirty steelhead over twenty inches in length May 1, 1998, through April 30, 1999; May 1, 1999, through March 31, 2000; and thereafter April 1st through the following March 31st.

(4) Military personnel, regardless of the length of time in the state of Washington, who are permanently stationed at a military installation within the state, are entitled to purchase a resident license. Military personnel must have a license to fish for game fish anywhere in the state. Dependents must establish a ninety-day residency.

(5) Selective gear rules: In waters designated as being under selective gear rules, only artificial flies with a barbless single hook or lures with a barbless single hook are lawful. It is unlawful to use bait. Fish may be released until the daily limit is retained. It is unlawful to fish from any floating device equipped with a motor, unless specifically allowed under special rules for individual waters.

(6) Night closure: In waters designated as having a night closure, it is unlawful to fish from one hour after official sunset to one hour before official sunrise.

(7) Wild cutthroat release: In waters requiring a wild cutthroat release, it is unlawful to possess any cutthroat that

does not have a missing adipose fin and a healed scar in the location of the missing fin.

(8) Wild steelhead release: In waters requiring wild steelhead release, it is unlawful to possess any steelhead trout that does not have a missing adipose or ventral fin and a healed scar at the location of the missing fin.

(9) Free fishing weekend: The ((first full weekend)) Saturday and Sunday following the first Monday in June is declared as free fishing weekend in Washington. On this weekend a fishing license is not required for any person, regardless of residency or age, to fish for or possess game fish and a fish and wildlife lands vehicle use permit is not required to utilize department parking facilities, except that it is unlawful to fish for or possess steelhead trout without the required catch record card. During free fishing weekend only the licensing requirement is affected, and all other rules remain in effect.

(10) Trout taken with bait: When fishing with bait, all trout equal to or greater than the minimum size are counted as part of the daily limit, whether kept or released, except steelhead trout may be caught and released while using bait until the daily limit is retained.

(11) Fish taken with artificial flies and lures: Where use of bait is prohibited, or where artificial flies or lures are used voluntarily, fish may be released until the daily limit is retained. If any fish has swallowed the hook or is hooked in the gill, eye or tongue, it should be kept if legal to do so.

(12) Burbot taken with set line: Where use of a set line is allowed for burbot, a single set line identified with the fisher's name and address and a maximum of ten hooks may be used.

(13) Rainbow trout taken from landlocked lakes: Rainbow trout taken from landlocked lakes shall not be considered steelhead and no catch record card is required.

(14) OPEN SEASONS:

LAKES, PONDS, AND RESERVOIRS: YEAR AROUND, unless specified otherwise under exceptions to state-wide rules.

RIVERS, STREAMS AND BEAVER PONDS: JUNE 1 THROUGH OCTOBER 31, unless specified otherwise under exceptions to state-wide rules.

Note: The date set for "traditional" April openers for Lakes, Ponds, and Reservoirs for this year and future years is the last Saturday in April.

(15) Daily limits and minimum sizes:

GAME FISH SPECIES	DAILY LIMIT	MINIMUM SIZE LIMIT	Where exceptions to the above closure for Dolly Varden/Bull Trout occur under individual listings in the exceptions to state-wide rules, Dolly Varden/Bull Trout count as part of the combined trout daily limit of five.		
BASS	Five - not more than three over fifteen inches Bass may be caught, retained, and released alive from a livewell until a daily limit is in possession.	None	WALLEYE	Five, not more than one over twenty-four inches	Eighteen inches
GRASS CARP....	It is unlawful to fish for or retain grass carp.			Walleye may be caught, retained, and released alive from a livewell until a daily limit is in possession.	
TROUT (except Eastern Brook trout)	A total of five trout, of which no more than two may be from Rivers, Streams, and Beaver Ponds. No more than two of the trout daily catch limit of 5 may be Steelhead.	None in Lakes, Ponds, and Reservoirs. Eight inches in Rivers, Streams, and Beaver Ponds.	WHITEFISH	Fifteen	None
EASTERN BROOK TROUT (Salvelinus fontinalis)	Five - to be considered part of the trout daily catch limit.	None	ALL OTHER GAME FISH	No Limit	None
BURBOT	Five	None	BULLFROGS	No Limit	None
CHANNEL CATFISH	Five if taken from lakes, ponds or reservoirs.	Twelve inches if taken in lakes, ponds or reservoirs with no more than one greater than 24 inches in length.	(16) Seasonal wild steelhead limits. (a) It is unlawful for any person to retain more than two wild steelhead from the following watersheds: (i) Clearwater River - mouth to Snahapish River. (ii) Hoh River - mainstem, south fork and tributaries thereto. (b) It is unlawful for any person to retain more than five wild steelhead from all of the following rivers and tributaries thereto: (i) Bogachiel River. (ii) Calawah River. (iii) Dickey River. (iv) Sol Duc River. (v) Quillayute River. (17) Possession limit. Except as otherwise provided, the possession limit is two daily limits in fresh, frozen or processed form. (18) River mouths. ((The following river mouth definitions are exceptions to the general river mouth definition:)) <u>River mouths that differ from the general definition are defined in WAC 220-56-105.</u>		

(a) The following game fish species are managed as trout:

Eastern brook trout
Brown trout
Cutthroat trout
Dolly Varden/Bull trout
Golden trout
Kokanee/Silver trout
Lake trout
Landlocked Atlantic salmon
Rainbow trout/Steelhead
Landlocked chinook and coho

(b) Wild steelhead release is required year-round.

(c) All waters, state-wide, are CLOSED YEAR AROUND to fishing for or retaining Dolly Varden/Bull Trout.

((Abernathy Creek	Highway 4 Bridge.
Bear River	Highway 101 Bridge.
Bone River	Highway 101 Bridge.
Chehalis River	Highway 101 Bridge in Aberdeen.
Cowlitz River	A line projected across the river between two fishing boundary markers set on each bank of the river approximately one half mile downstream from the lower most railroad bridge crossing the Cowlitz River.

Dakota Creek

A line from the outer most headland of the south bank to a house at 1285 Runge Avenue, Blaine, Washington, approximately one quarter mile downstream from the Blaine Road Bridge.

Deschutes River

A line projected across the river 400 feet below the lower Tumwater Falls fish ladder.

Drano Lake

Highway 14 Bridge.

Duwamish River

First Avenue South Bridge.

Skamokawa Creek

Elk River

Highway 105 Bridge.

Skookum Creek

Entiat River

Highway 97 Bridge.

Hoquiam River

Highway 101 Bridge.

Snohomish River

Humptulips River

Mouth of Jessie Slough.

Johns River

Highway 105 Bridge.

South Nemah River

Kalama River

Boundary markers located at the mouth.

Kennedy Creek

An arc 500 yards east of the midpoint of the northbound Highway 101 Bridge.

Spokane River

Kettle River

Barstow Bridge.

Tueannon Creek

Lake Washington Ship Canal

A line 400 feet west of the fish ladder at the Chittenden Locks.

Wallace River

Lewis River

Boundary markers at the mouth.

Washougal River

Little White Salmon River

At boundary markers on the river bank downstream from the Little White Salmon National Fish Hatchery.

Whateom Creek

Methow River

Highway 97 Bridge.

White Salmon River

Naselle River

Highway 101 Bridge.

North Nemah River

Highway 101 Bridge.

Niwakiukum River

Highway 101 Bridge.

North River

Highway 105 Bridge.

Palix River

Highway 101 Bridge.

Puyallup River

11th Street Bridge.

Samish River

Samish Island Bridge (Bayview-Edison Road).
68th Ave. N.E. Bridge.

White Salmon River

Sammamish River

A line projected from the terminus of the jetty with McGinn Island to the white monument on the easterly end of Ika Island, then to a white monument on the westerly end of Craft Island, then to a white monument near the corner of the levee on the westerly side of Dry Slough, and then to a white monument on the easterly side of Tom Moore Slough.

Highway 4 Bridge.

A line 400 yards below the old railroad bridge. Burlington Northern Railway Bridges crossing main river and sloughs.

Lynn Point 117 degrees true to the opposite shore.

State Route 25 Bridge.

State Highway 261 Bridge.

The furthest downstream railroad bridge.

A straight line projected from the James River pump house southeast across the Washougal River to the east end of Highway 14 Bridge at the upper end of Lady Island.

A line projected approximately 14 degrees true from the flashing light to the southwesterly end of the Port of Bellingham North Terminal to the southernmost point of the dike surrounding the Georgia Pacific treatment pond.

Markers downstream of the Burlington Northern Railroad Bridge.

Wind River	Boundary line/markers at mouth.	Area	Time Period
Willapa River	South Bend boat launch.	Lewis River	
Yakima River	Highway 240 Bridge.))	North Fork	
	(19) Nonbuoyant lure and night closure restriction: In the ((following)) waters <u>defined in WAC 220-56-205</u> and during the periods shown, it is unlawful to use a nonbuoyant lure that has more than one single hook or has a hook measuring more than 3/4 inch point to shank and a night closure is in effect((:	From lower Cedar Creek Boat Ramp to Colvin Creek	August 1—December 31
		Wasougal River	
		Downstream of Salmon Falls Bridge	
		Teal River	September 1—October 31
		From Leavenworth Federal Fish Hatchery to mouth	
		Wenatchee River	May 8—June 30
		From mouth of Teal River to Highway 2 Bridge	
		Skagit River (and tributaries) Upstream of Gilligan Creek	May 8—June 15
		Tokul Creek	
		From mouth to posted cable markers	
		Capitol Lake	July 1—November 30
		Deshutes River	
		Elephant River	
		Grays River	
		Green/Duquamish River mouth to Highway 164 Bridge	December 1—March 31
		McAllister Creek	August 1—November 30
		Nisqually River	August 1—November 30
		Puyallup River	September 1—November 30
		—mouth to Carbon River	August 1—November 30
		Skykomish River (including all forks)	August 1—November 30
		Snohomish River	August 1—November 30
		White/Stuck River	October 1—November 30
		Tuttle River—North Fork	
		Green River (Cowlitz Co.) mouth to 1,500 feet below hatchery	September 1—October 31
		rack	
		(20) Freshwater fishing hours: It is unlawful to fish during a night closure. A night closure is in effect for all waters during the period of a nonbuoyant lure restriction)).	September 1—October 31
Area	Time Period		
Naselle River (including all forks)			
Hwy 101 Bridge to Hwy 4 Bridge	July 1—January 31		
Hwy 4 Bridge to Big Hill Bridge	October 16—January 31		
Willapa River Mouth to Hwy 6 Bridge	October 1—November 30		
Hwy 6 Bridge to Fork Creek	October 16—January 31		
Humptulips River	September 1—November 30		
Satsop River (including all forks)	September 1—November 30		
Nemah River—North Fork			
Nemah River—Middle Fork	October 1—November 30		
Dungeness and Gray Wolf Rivers	September 1—November 30		
Kennedy Creek	August 1—October 15		
Nooksack River—South Fork mouth to Skookum Creek	October 1—December 31		
Upstream from Skookum Creek	August 1—October 31		
Big Quileene River	June 1—September 30		
Samish River	August 1—December 31		
Stillaguamish River (including all forks)	August 1—November 30		
Whateom Creek	August 1—December 31		
Cowlitz River From Mill Creek to Barrier Dam	August 1—October 31		
Kalama River From mouth to temporary rack	September 1—October 31		

(20) Freshwater fishing hours: It is unlawful to fish during a night closure. A night closure is in effect for all waters during the period of a nonbuoyant lure restriction)).

AMENDATORY SECTION (Amending Order 99-13, filed 3/30/99, effective 5/1/99)

WAC 232-28-619 Washington game fish—Exceptions to state-wide rules. (1) County freshwater exceptions to state-wide rules:

(a) Adams and Grant counties: All seasons in specific freshwater exceptions to state-wide rules apply to inlet and outlet streams of named lakes in Grant and Adams counties.

(b) Adams, Douglas, Franklin, Grant, and Okanogan counties, except Zosel Dam (Okanogan River): Lawful to fish to base of all dams.

(c) Benton County: Rivers, streams and beaver ponds open year around.

(d) Ferry and Lincoln counties: Except those tributaries listed under specific water exceptions to state-wide rules, all tributaries to Lake Roosevelt between Grand Coulee Dam and the State Highway 25 Bridge at Northport except Barnaby and Nancy creeks: Trout: Daily limit 5, no minimum size.

(e) Kitsap County and Mason County on Tahuya Peninsula west of Belfair-Bremerton Highway (S.R. 3): Beaver ponds: Last Saturday in April through October 31 season. Trout: No minimum length.

(2) Specific freshwater exceptions to state-wide rules:

Aberdeen Lake (Grays Harbor County): Last Saturday in April through October 31 season.

Abernathy Creek (Cowlitz County):

From mouth to a point five hundred feet downstream from salmon hatchery: June 1 through March 15 season. Trout: Minimum length twelve inches. Release wild cutthroat. Release all steelhead June 1 through October 31.

From Abernathy Falls to posted markers five hundred feet downstream from salmon hatchery: Closed waters.

Ahtanum Creek, including North and Middle Forks (Yakima County): Selective gear rules. North Fork from Grey Rock Trailhead Bridge crossing to Shellneck Creek: Closed waters.

Alder Creek (Cowlitz County): Closed waters.

Aldrich Lake (Mason County): Last Saturday in April through October 31 season.

Aldwell Lake (Clallam County): Last Saturday in April through October 31 season. Selective gear rules except fishing from a floating device equipped with a motor permitted. Trout: Daily limit two, minimum length twelve inches.

Aeneas Lake (Okanogan County): Last Saturday in April through October 31 season. Fly fishing only. Fishing from a floating device equipped with a motor prohibited.

Alexander Lake (Kitsap County): Closed waters.

Alkali Lake (Grant County): Crappie: Not more than five greater than eight inches in length. Bluegill: Not more than five greater than six inches in length.

Alta Lake (Okanogan County): Last Saturday in April through September 30 season.

Amber Lake (Spokane County): Last Saturday in April through September 30 season. Selective gear rules, except electric motors allowed. Trout: Daily limit two, minimum length fourteen inches; release rainbow trout missing adipose fin. Additional season October 1 through November 30. Selective gear rules. All species: Release all fish.

American Lake (Pierce County): Chumming permitted.

American River (Yakima County): Selective gear rules.

Anderson Lake (Jefferson County): Last Saturday in April through October 31 season. Fishing from a floating device equipped with an internal combustion motor prohibited. From September 1 through October 31, selective gear rules and all species: Release all fish.

Armstrong Lake (Snohomish County): Last Saturday in April through October 31 season.

Asotin Creek, mainstem and forks (Asotin County): Closed to fishing for steelhead.

From SR 129 Bridge upstream to the forks: Lawful to fish up to base of Headgate Dam.

North Fork from mouth upstream to USFS boundary: Selective gear rules.

North Fork from USFS boundary upstream and all other tributaries: Closed waters.

South Fork and tributaries: Closed waters.

B.C. Mill Pond (Stevens County): Last Saturday in April through October 31 season.

Bachelor Creek (Yakima County): Year around season. Trout: Daily limit five, no minimum length.

Badger Lake (Spokane County): Last Saturday in April through September 30 season.

Baker Lake (Whatcom County): Last Saturday in April through October 31 season, except closed waters in an area two hundred feet in radius around the pump discharge at the south end of the lake. Chumming permitted. Trout: Minimum length six inches and maximum length eighteen inches.

Baker River (Skagit County): From the mouth to Baker River fish barrier dam: Closed waters June 1 through August 31.

Ballinger Lake (Snohomish County): Bass: Only bass less than twelve inches or over fifteen inches in length may be retained.

Barnaby Slough (Skagit County): Closed waters.

Battle Ground Lake (Clark County): Fishing from a floating device equipped with an internal combustion motor prohibited. Trout: No more than 2 trout 20 inches or greater in length may be retained.

Bay Lake (Pierce County): Last Saturday in April through October 31 season.

Bayley Lake (Stevens County): Last Saturday in April through July 4 season. Fly fishing only. Fishing from a floating device equipped with a motor prohibited. Trout: Daily

limit one, minimum length fourteen inches. Additional season, July 5 through October 31. Fly fishing only. Fishing from a floating device equipped with a motor prohibited. All species: Release all fish. Inlet stream: Closed waters.

Bear Creek (Yakima County), tributary to South Fork Tieton River: From the mouth to the falls (approximately 3/4 mile): Closed waters.

Bear Lake (Spokane County): Juveniles and holders of ~~((free))~~ disability licenses only.

Bear River (Pacific County): June 1 through last day in February season. All species: Release all fish. Single point barbless hooks required July 1 through January 31 downstream from the Lime Quarry Road. Upstream from the Lime Quarry Road: Selective gear rules June 1 through last day in February.

Bearpaw Lake (Whatcom County): Last Saturday in April through October 31 season. Selective gear rules. Trout: Daily and possession limit one, minimum length eighteen inches.

Beaver Creek (Thurston County): Selective gear rules. Trout: Minimum length twelve inches.

Beaver Creek (tributary to Elochoman River) (Wahkiakum County): Closed waters.

Beaver Lake (Columbia County): March 1 through October 31 season. Fishing from any floating device prohibited.

Beaver Lake (King County): Bass: Only bass less than twelve inches or over fifteen inches in length may be retained.

Beda Lake (Grant County): Selective gear rules. Trout: Daily limit one fish.

Beehive (Lake) Reservoir (Chelan County): Last Saturday in April through October 31 season. July 5 through October 31, selective gear rules, and all species: Release all fish.

Bennington Lake (Mill Creek Reservoir) (Walla Walla County): Fishing from a floating device equipped with an internal combustion motor prohibited.

Benson Lake (Mason County): Last Saturday in April through October 31 season.

Berry Creek (tributary to Nisqually River) (Lewis County): Selective gear rules.

Big Bear Creek (tributary of Sammamish River) (Snohomish/King counties): Closed waters.

Big Beaver Creek (Whatcom County):

From closed water markers on Ross Lake upstream one-quarter mile: Closed waters.

From one-quarter mile markers upstream, including tributary streams, and beaver ponds that are tributary to Big Beaver Creek: July 1 through October 31 season. Selective gear rules. All species: Release all fish.

Big Beef Creek (Kitsap County): June 1 through October 31 season. Trout: Release all cutthroat trout.

Big Four Lake (Columbia County): March 1 through October 31 season. Fly fishing only. Fishing from any floating device prohibited. Trout: Daily limit two.

Big Lake (Skagit County): Bass: Only bass less than twelve inches or over fifteen inches in length may be retained.

Big Meadow Lake (Pend Oreille County): Last Saturday in April through October 31 season.

Big River (Clallam County): June 1 through last day in February season. Trout: Minimum length fourteen inches. Wild steelhead may be retained December 1 through last day in February.

Big Twin Lake (Okanogan County): Last Saturday in April through October 31 season. Selective gear rules except electric motors permitted. Trout: Daily limit one.

Bird Creek (Klickitat County): Trout: Daily limit five.

Black Lake (Lower Wheeler Reservoir) (Chelan County): Last Saturday in April through October 31 season. July 5 through October 31, selective gear rules, and all species: Release all fish.

Black Lake (Okanogan County): Selective gear rules.

Black Lake (Pacific County): Last Saturday in April through October 31 season.

Black Lake (Stevens County): Last Saturday in April through October 31 season.

Black River (Thurston County), from mouth to Black Lake and including all tributaries west of Interstate Highway 5, including Waddell Creek, Mima Creek, Dempsey Creek: Selective gear rules. Trout: Minimum length fourteen inches.

Blockhouse Creek (Klickitat County): Trout: Daily limit five.

Bloodgood Creek (Klickitat County): Trout: Daily limit five.

Blooms Ditch (Thurston County): Selective gear rules. Trout: Minimum length twelve inches. Release wild cutthroat.

Blue Creek (Lewis County), from mouth to Spencer Road: Closed waters.

Blue Lake (Columbia County): March 1 through October 31 season. Fishing from any floating device prohibited.

Blue Lake (Cowlitz County): Last Saturday in April through October 31 season. Selective gear rules. All species: Release all fish.

Blue Lake (Grant County): Last Saturday in April through September 30 season.

Blue Lake (near Sinlahekin) (Okanogan County): Last Saturday in April through October 31 season. Selective gear rules, except electric motors allowed. Trout: Daily limit one.

Blue Lake (near Wannacut Lake) (Okanogan County): Last Saturday in April through October 31 season. Selective gear rules, except electric motors allowed. Trout: Daily limit one.

Bobcat Creek and Ponds (Adams County): March 1 through September 30 season.

Bogachiel River (Clallam County), from mouth to National Park boundary: June 1 through April 30 season. December 1 through April 30, selective gear rules from Highway 101 to National Park boundary. Trout: Minimum length fourteen inches. December 1 through April 30, mouth to Highway 101, one wild steelhead per day may be retained.

Bonaparte Lake (Okanogan County): Trout: No more than one over twenty inches in length may be retained.

Bosworth Lake (Snohomish County): Last Saturday in April through October 31 season.

Boundary Creek (Clallam County): Closed waters.

Bowman Creek (Klickitat County): Trout: Daily limit five.

Box Canyon Creek (Kittitas County), from mouth to bridge on USFS Road No. 4930: Closed waters.

Boxley Creek (North Bend) (King County), from its mouth to the falls located at approximately river mile 0.9: Closed waters.

Boyle Lake (King County): Last Saturday in April through October 31 season. The inlet and outlet streams to Boyle Lake are closed waters.

Bridges Lake (King County): Last Saturday in April through October 31 season. The inlet and outlet streams to Bridges Lake are closed waters.

Brookies Lake (Grant County): Selective gear rules. Trout: Daily limit one fish.

Browns Lake and inlet streams (Pend Oreille County): Last Saturday in April through October 31 season. Fly fishing only. Fishing from a floating device equipped with an internal combustion motor prohibited.

Buck Lake (Kitsap County): Last Saturday in April through October 31 season.

Buckskin Creek and tributaries (Yakima County), from mouth to the west boundary of Suntides Golf Course: Closed waters.

Bumping Lake (Reservoir) (Yakima County): Chumming permitted. Trout: Kokanee not counted in daily trout limit. Kokanee daily limit sixteen.

Bumping River (Yakima County):

From mouth to Bumping Reservoir: Lawful to fish to base of Bumping Dam. Selective gear rules June 1 through October 31. Whitefish: Additional December 1 through March 31 season. Terminal gear limited to one single hook. Release all fish other than whitefish.

Burbank Slough (Walla Walla County): Fishing from any floating device prohibited.

Burke Lake (Grant County): March 1 through July 31 season.

Burley Creek (Kitsap County): June 1 through last day in February season. Trout: Minimum length fourteen inches.

Butter Creek (Lewis County): Selective gear rules. Trout: Minimum length ten inches.

Buttermilk Creek, including East and West Forks (Okanogan County): Selective gear rules. Trout: Maximum length twenty inches.

Cady Lake (Mason County): Fly fishing only. Fishing from a floating device equipped with an internal combustion motor prohibited. All species: Release all fish.

Cain Lake (Whatcom County): Last Saturday in April through October 31 season.

Calawah River (Clallam County), from mouth to forks: June 1 through April 30 season. December 1 through April 30, selective gear rules from Highway 101 to forks. Trout: Minimum length fourteen inches. December 1 through April 30, mouth to Highway 101, one wild steelhead per day may be retained.

Calawah River, South Fork (Clallam County) from mouth to National Park boundary: June 1 through last day in February season. December 1 through last day in February, selective gear rules. Trout: Minimum length fourteen inches.

Caldwell Lake (Pend Oreille County): Last Saturday in April through October 31 season. Fishing from a floating device equipped with an internal combustion motor prohibited. Trout: Daily limit two, minimum length twelve inches.

Caliche Lakes, Lower, Upper and West (Grant County): March 1 through July 31 season.

Calispell Creek (Calispell River) (Pend Oreille County): From mouth to Calispell Lake: Year around season. From Calispell Lake upstream to source: Selective gear rules.

Calligan Lake (King County): June 1 through October 31 season. All tributary streams, and the upper third of the outlet are closed waters.

Campbell Creek (Mason County): Closed waters.

Campbell Lake (Okanogan County): September 1 through March 31 season.

Campbell Lake (Skagit County): Bass: Only bass less than twelve inches or over fifteen inches in length may be retained.

Canyon Creek (Klickitat County): Trout: Daily limit five.

Canyon Creek (Mason County): Closed waters.

Canyon Creek (S.F. Stillaguamish River) (Snohomish County), mouth to forks: June 1 through last day in February season. Trout: Minimum length fourteen inches. Wild steelhead may be retained December 1 through last day in February.

Capitol Lake (Thurston County), from its outlet to a point four hundred feet below the lowest Tumwater Falls (Deschutes River) fish ladder: Closed waters: Percival Cove, west of a set of markers on the western shoreline of the south basin of Capitol Lake. June 1 through July 31 season. Trout: Daily limit five, minimum length eight inches. Additional August 1 through March 31 season. Trout: Daily limit two, minimum length fourteen inches.

Carbon River (Pierce County), from its mouth to the Highway 162 Bridge: June 1 through January 31 season. Trout: Minimum length fourteen inches. Wild steelhead may be retained December 1 through January 31. Additional February 1 through March 31 season. Trout: Minimum length fourteen inches.

Carlisle Lake (Lewis County): Last Saturday in April through last day in February season. Fishing from a floating device equipped with an internal combustion motor prohibited. Bass: Minimum length fourteen inches.

Carl's Lake (Pend Oreille County): Last Saturday in April through October 31 season.

Carney Lake (Pierce County): Last Saturday in April through June 30 and September 1 through October 31 seasons. Fishing from a floating device equipped with an internal combustion motor prohibited.

Carson Lake (Mason County): Last Saturday in April through October 31 season.

Cascade Lake (Grant County): March 1 through July 31 season.

Cascade Lake (San Juan County): Last Saturday in April through October 31 season.

Cascade River (Skagit County):

From the Rockport-Cascade Road Bridge upstream: June 1 through last day in February season. Trout: Trout except Dolly Varden/Bull Trout, minimum length fourteen inches. Legal to retain Dolly Varden/Bull Trout as part of the trout daily limit, minimum length twenty inches. Wild steelhead may be retained December 1 through last day in February.

From the mouth to the Rockport-Cascade Road Bridge: October 1 through last day in February season. Trout: Trout except Dolly Varden/Bull Trout, minimum length fourteen inches. Legal to retain Dolly Varden/Bull Trout as part of the trout daily limit, minimum length twenty inches. Wild steelhead may be retained December 1 through last day in February.

Cases Pond (Pacific County): Last Saturday in April through October 31 season. Juveniles only.

Cashmere Pond (Chelan County): Juveniles only.

Cassidy Lake (Snohomish County): Bass: Only bass less than twelve inches or over fifteen inches in length may be retained.

Castle Lake (Cowlitz County): Selective gear rules. Trout: Daily limit one, minimum length sixteen inches.

Cattail Lake (Grant County): March 1 through March 31 and September 1 through September 30 seasons.

Cavanaugh Lake (Skagit County): Chumming permitted.

Cedar Creek (tributary of N.F. Lewis) (Clark County), from mouth to junction of Chelatchie Creek: From the Grist Mill Bridge to 100 feet upstream of the falls: Closed waters. June 1 through March 15 season. Trout: Minimum length twelve inches. Release wild cutthroat.

Cedar Creek (Jefferson County): June 1 through last day in February season. Trout: Minimum length fourteen inches.

Cedar Creek (Okanogan County), from mouth to Cedar Falls: Selective gear rules. Trout: Maximum length twenty inches.

Cedar Lake (Stevens County): Last Saturday in April through October 31 season.

Cedar River (King County): Closed waters.

Chambers Creek Estuary (downstream from markers 400 feet below the Boise-Cascade Dam to the Burlington Northern Railroad Bridge) (Pierce County): July 1 through November 15 season. Trout: Minimum length fourteen inches.

Chambers Lake (within Ft. Lewis Military Reservation) (Pierce County): Selective gear rules, except electric motors allowed. Trout: Release all trout.

Chaplain Lake (Snohomish County): Closed waters.

Chapman Lake (Spokane County): Last Saturday in April through October 31 season. Chumming permitted. Trout: Kokanee not counted in daily trout limit. Kokanee daily limit ten.

Chehalis River (Grays Harbor County), from Union Pacific Railroad Bridge in Aberdeen to high bridge on Weyerhaeuser 1000 line (approximately 400 yards downstream from Roger Creek): June 1 through April 15 season. Single point barbless hooks required October 1 through October 31 upstream from mouth to Porter Bridge and September 16 through October 31 from the Porter Bridge to the high bridge. Trout: Minimum length fourteen inches.

Chehalis River, South Fork (Lewis County), from mouth to Highway Bridge at Boistfort: June 1 through April 15 season. Trout: Minimum length fourteen inches.

Chehalis River Potholes (adjacent to the Chehalis River south of Highway 12 in Grays Harbor County, this does not include sloughs or beaver ponds): Last Saturday in April through October 31 season.

Chelan Lake (Chelan County): Year around season except closed April 1 through June 30 north of a line between Purple Point at Stehekin and Painted Rocks and April 1 through June 30 within 400 feet of the mouths of all tributaries north of Fields Point. Trout except kokanee: Daily limit two except south of Fields Point May 15 through September 30 daily limit 5, not more than two of which may be over 15 inches in length. Trout except kokanee minimum length 15 inches except south of Fields Point minimum length 8 inches May 15 through September 30. Kokanee not counted in daily trout

limit. Kokanee daily limit five, no minimum length. Salmon: Minimum length 15 inches. Burbot: Set line gear allowed.

Chelan Lake Tributaries (Chelan County), from mouths upstream one mile except Stehekin River: July 1 through October 31 season. Selective gear rules.

Chelan River (Chelan County): Year around season. Selective gear rules. Trout, minimum length twelve inches, maximum length twenty inches.

Chewelah Creek, forks and tributaries (Stevens County): Selective gear rules.

Chewuch River (Chewack River) (Okanogan County), from mouth to Pasayten Wilderness boundary: Selective gear rules. Trout: Minimum length twelve inches, maximum length twenty inches. Whitefish: Additional December 1 through March 31 season. Release all fish except whitefish.

Chimacum Creek (Jefferson County):

From mouth to Ness's Corner Road: June 1 through August 31 season. Trout: Minimum length fourteen inches.

From Ness's Corner Road to headwaters: Trout: Minimum length fourteen inches.

Chiwaukum Creek (Chelan County), from mouth to South Fork: Selective gear rules.

Chiwawa River (Chelan County): Selective gear rules. Trout: Maximum length twenty inches.

Chopaka Lake (Okanogan County): Last Saturday in April through October 31 season. Fly fishing only. Fishing from a floating device equipped with a motor prohibited. Trout: Daily limit one.

Cispus River (Lewis County), from mouth to North Fork: Trout: Additional season November 1 through May 31, steelhead only. Release all fish other than steelhead.

Cispus River, North Fork (Lewis County): Trout: No more than one over twelve inches in length.

Clallam River (Clallam County): June 1 through last day in February season. Trout: Minimum length fourteen inches.

Clara Lake (Mason County): Last Saturday in April through October 31 season.

Clear Lake (Chelan County): Last Saturday in April through October 31 season. From July 5 through October 31, selective gear rules and all species: Release all fish.

Clear Lake (Pierce County): Chumming permitted.

Clear Lake (Spokane County): Last Saturday in April through October 31 season.

Clear Lake (Thurston County): Last Saturday in April through October 31 season.

Clearwater River (Jefferson County):

From mouth to Snahapish River: June 1 through April 15 season. Single point barbless hooks required September 1 through November 30. Trout: Minimum length fourteen inches. December 1 through April 15, one wild steelhead per day may be retained.

From Snahapish River upstream: Trout, minimum length fourteen inches.

Cle Elum Lake (Reservoir) (Kittitas County): Trout except kokanee: Daily limit two, minimum length twelve inches. Kokanee not counted in daily trout limit. Kokanee daily limit sixteen, no minimum size. Burbot: Set line gear allowed.

Cle Elum River (Kittitas County), from mouth to Cle Elum Dam: Lawful to fish to base of Cle Elum Dam. Selective gear rules. Whitefish: Additional December 1 through March 31 season. Release all fish except whitefish. Terminal gear restricted to one single hook.

Cliff Lake (Grant County): March 1 through July 31 season.

Cloquallum Creek (Grays Harbor County):

From mouth to second bridge on Cloquallum Road: June 1 through last day in February season. Trout: Minimum length fourteen inches.

From mouth to Highway 8 Bridge: Additional March 1 through March 31 season. Trout: Minimum length fourteen inches.

Clough Creek (North Bend) (King County): Closed waters.

Clover Creek (Pierce County), within the boundaries of McChord Air Force Base: Selective gear rules. Trout: Daily limit one, minimum length twelve inches.

Coal Creek (Cowlitz County), from mouth to four hundred feet below falls: June 1 through last day in February season. Trout: Minimum length fourteen inches.

Coal Creek (tributary of Lake Washington) (King County): Closed waters.

Coal Creek (near Snoqualmie) (King County), from mouth to Highway I-90: Last Saturday in April through October 31 season. Juveniles only. Trout: No minimum length.

Coffee Pot Lake (Lincoln County): March 1 through August 31 season. Selective gear rules except motors allowed. Trout: Daily limit two. Bass: Daily limit two, maximum length fourteen inches. Crappie: Daily limit ten.

Coldwater Lake (Cowlitz County): Selective gear rules except use of electric motors allowed. Trout: Daily limit one, minimum length sixteen inches.

Coldwater Lake inlet and outlet streams (Cowlitz County): Closed waters.

Colville River (Stevens County):

From mouth to bridge at Town of Valley: Year around season. Trout: Daily limit five fish, not more than two of which may be brown trout October 1 through November 30. Walleye: No minimum size. Daily limit eight fish not more than one of which may be longer than 20 inches. Release walleye 16 to 20 inches in length.

From bridge at Valley upstream and tributaries: Selective gear rules.

Columbia Park Lagoon (Benton County): Juveniles and licensed adults accompanied by a juvenile only.

Columbia River, including impoundments and all connecting sloughs, except Wells Ponds: Year-round season unless otherwise provided. General species provisions (unless otherwise provided for in this section): Bass: Daily limit five fish, not more than three of which may be over 15 inches. Trout: Daily limit two fish, minimum length 12 inches, except release all Dolly Varden/Bull Trout. Walleye: Daily limit five fish of which not more than one may be over 24 inches, minimum length 18 inches. Whitefish: Daily limit 15 fish. All other gamefish: No daily limit, except release all grass carp.

In the Columbia River between Washington and Oregon, the license of either state is valid. Anglers must comply with the fishing regulations of the state in which they are fishing. This provision does not allow an angler licensed in Oregon to fish on the Washington shore, or in the sloughs or tributaries in Washington.

Anglers fishing the Columbia River are restricted to one daily limit, as defined by the laws of the state in which they are fishing, even if they are licensed by both states.

From a true north-south line through Buoy 10 to the Megler-Astoria Bridge: Trout: Release wild cutthroat. Release all trout April 1 through July 31. Fishing from the north jetty is allowed during salmon season openings.

From the Megler-Astoria Bridge to the I-5 Bridge: Closed waters: September 1 through September 30 at mouth of Abernathy Creek from the Washington shore to a line between Abernathy Point light and a boundary marker east of the mouth of Abernathy Creek. Trout: Release wild cutthroat. Release all trout April 1 through May 15.

From the I-5 Bridge to the Highway 395 Bridge at Pasco, including Drano Lake: Closed waters: (1) From the upstream line of Bonneville Dam to boundary markers located six hundred feet below the fish ladder. (2) Waters from the upstream side of the Interstate Bridge at The Dalles to upper line of The Dalles Dam except that bank fishing is permitted up to four hundred feet below the fishway entrance on the Washington shore. (3) From John Day Dam downstream about three thousand feet except that bank fishing is permitted up to four hundred feet below the fishway entrance on the Washington shore. (4) From McNary Dam downstream to a line across the river from the red and white marker on the Oregon shore on a line that intersects the downstream end of the wing wall of the boat lock near the Washington shore. Trout: Release wild cutthroat from I-5 Bridge to Bonneville Dam and release all cutthroat in the waters of Drano Lake. Release all trout April 1 through June 15.

From the Highway 395 Bridge at Pasco to the old Hanford townsite (wooden towers) powerline crossing, in Sec. 30, T13N, R28E: Closed waters: Ringold Springs Creek (Hatchery Creek). Trout: Release all trout, except May 1 through August 15 in those waters from the Ringold Hatchery from WDFW markers 1/4 mile downstream from the Ringold wastewater outlet to WDFW markers 1/2 mile upstream from Spring Creek when fishing from the bank on the hatchery side of the river.

From the old Hanford townsite (wooden towers) powerline crossing in Sec. 30, T13N, R28E, to Vernita Bridge, (Highway 24): All species: February 1 through October 22 season. Trout: Release all trout.

From Vernita Bridge (Highway 24) to Priest Rapids Dam: Closed waters: (1) Priest Rapids Dam - waters between the upstream line of Priest Rapids Dam downstream to the boundary markers six hundred fifty feet below the fish ladders. (2) Jackson (Moran Creek or Priest Rapids Hatchery outlet) Creek - all waters of the Priest Rapids Hatchery system to the outlet on the Columbia River, extending to mid-stream Columbia between boundary markers located one hundred feet upstream and four hundred feet downstream of the mouth. All species: June 1 through March 31 season. Trout: Release all trout.

From Priest Rapids Dam to Chief Joseph Dam, including up to base of Washburn Pond outlet structure: Closed waters: (1) Wanapum Dam - waters between the upstream line of Wanapum Dam to the boundary markers seven hundred fifty feet downstream of the east fish ladder and five hundred feet downstream of the west fish ladder. (2) Rock Island Dam to boundary markers four hundred feet downstream of the fish ladders. (3) Rocky Reach Dam - waters between the upstream line of Rocky Reach Dam to boundary markers four hundred feet downstream of the fish ladders. (4) Wells Dam - waters between the upstream line of Wells Dam to boundary markers four hundred feet downstream of the spawning channel discharge (Chelan County) and fish ladder (Douglas County). (5) Chief Joseph Dam - closed to fishing from the Okanogan County shore between the dam and the Highway 17 Bridge. Closed to boat fishing from the boundary marker to the Corps of Engineers safety zone marker. Trout: Release all trout.

Above Chief Joseph Dam: See Lake Roosevelt and Rufus Woods Lake.

Conconully Lake (Okanogan County): Last Saturday in April through October 31 season.

Conconully Reservoir (Okanogan County): Last Saturday in April through October 31 season.

Conger Pond (Pend Oreille County): Last Saturday in April through October 31 season.

Connelly Creek and tributaries (Lewis County), from four hundred feet below the city of Morton Dam to its source: Closed waters.

Conner Lake (Okanogan County): Last Saturday in April through October 31 season.

Coot Lake (Grant County): March 1 through July 31 season.

Copalis River (Grays Harbor County): June 1 through last day in February season. Trout: Minimum length fourteen inches.

Cottage Lake (King County): Last Saturday in April through October 31 season.

Cottonwood Creek (Lincoln County): Year around season.

Cougar Creek (tributary to Yale Reservoir) (Cowlitz County): June 1 through August 31 season.

Cougar Lake (near Winthrop) (Okanogan County): September 1 through March 31 season.

Coulter Creek (Kitsap/Mason counties): Trout: Minimum length fourteen inches.

County Line Ponds (Skagit County): Closed waters.

Cow Lake (Adams County): Bass: Only bass less than twelve inches or over fifteen inches in length may be retained.

Coweeeman River (Cowlitz County), from mouth to Mulholland Creek: June 1 through March 15 season. Trout: Minimum length twelve inches. Release wild cutthroat.

Cowiche Creek (Yakima County): Selective gear rules.

Cowlitz Falls Reservoir (Lake Scanewa) (Lewis County): June 1 through last day in February season. The upstream boundary of the reservoir in the Cowlitz arm is the posted PUD sign on Peters Road. The upstream boundary of the reservoir in the Cispus arm is the posted markers at the Lewis County PUD kayak launch, approximately 1.5 miles upstream from the confluence of the Cowlitz and Cispus arms. Trout: Daily limit five, minimum length eight inches.

Cowlitz River (Lewis County):

From mouth to Mayfield Dam: Year around season. Lawful to fish up to four hundred feet or the posted deadline at barrier dam. From the barrier dam downstream to a line from the mouth of Mill Creek to a boundary marker on the opposite shore, it is unlawful to fish from any floating device. All species: Release all fish except steelhead April 1 through May 31. Trout: Daily limit five, minimum length twelve inches, no more than two over twenty inches. Release wild cutthroat. Below Barrier Dam release all steelhead missing right ventral fin.

From Mayfield Dam to mouth of Muddy Fork: Year around season.

Cowlitz River, Clear and Muddy Forks (Lewis County): Trout: Daily limit five, no more than one over twelve inches in length may be retained.

Coyote Creek and Ponds (Adams County): March 1 through September 30 season.

Crab Creek (Adams/Grant counties):

From Highway 26 to Morgan Lake Road in Section 36: March 1 through September 30 season.

From Morgan Lake Road in Section 36 to O'Sullivan Dam (including Marsh Unit I and II impoundments): Closed waters.

Crab Creek (Lincoln County) and tributaries: Year around season.

Crabapple Lake (Snohomish County): Last Saturday in April through October 31 season.

Cranberry Creek (Mason County), mouth to Lake Limerick: Closed waters.

Crawfish Lake (Okanogan County): Last Saturday in April through October 31 season. Fishing from a floating device equipped with an internal combustion engine prohibited.

Crescent Lake (Pend Oreille County): Last Saturday in April through October 31 season.

Crystal Lake (Grant County): March 1 through July 31 season.

Cup Lake (Grant County): March 1 through July 31 season.

Curl Lake (Columbia County): Last Saturday in April through October 31 season. Fishing from any floating device prohibited.

Curley Creek (Kitsap County): June 1 through last day in February season. Trout: Minimum length fourteen inches.

Damon Lake (Grays Harbor County): June 1 through October 31 season.

Davis Lake (Ferry County): Last Saturday in April through October 31 season.

Davis Lake (Lewis County): Last Saturday in April to last day in February season.

Davis Lake (Okanogan County): September 1 through March 31 season

Dayton Pond (Columbia County): Juveniles only.

Deadman Lake (Adams County): March 1 through September 30 season.

De Coursey Pond (Pierce County): Last Saturday in April through October 31 season. Juveniles only.

Deep Creek (Clallam County): Closed waters.

Deep Creek (tributary to Bumping Lake) (Yakima County): Mouth to second bridge crossing on USFS Rd. 1808 (approximately 3.7 miles from junction of USFS Rds. 1800 and 1808): Closed waters.

Deep Lake (Grant County): Last Saturday in April through September 30 season.

Deep Lake (Stevens County): Last Saturday in April through October 31 season.

Deep Lake (Thurston County): Last Saturday in April through October 31 season.

Deep River (Wahkiakum County): Year around season. Trout: Minimum length 14 inches.

Deer Creek (Mason County): Closed waters.

Deer Creek and Little Deer Creek (tributaries to North Fork Stillaguamish) (Skagit County): Closed waters.

Deer Lake (Columbia County): March 1 through October 31 season. Fishing from any floating device prohibited.

Deer Lake (Island County): Last Saturday in April through October 31 season.

Deer (Deer Springs) Lake (Lincoln County): Last Saturday in April through September 30 season.

Deer Lake (Mason County): Last Saturday in April through October 31 season.

Deer Lake (Stevens County): Last Saturday in April through October 31 season. Trout: No more than two over twenty inches in length may be retained.

Dempsey Creek (Thurston County): Selective gear rules. Trout: Minimum length twelve inches.

De Roux Creek (Yakima County): Selective gear rules.

Deschutes River (Thurston County), from old U.S. Highway 99 Bridge near Tumwater to Henderson Boulevard Bridge near Pioneer Park, except waters from Old Highway 99 Bridge to four hundred feet below lowest Tumwater Falls fish ladder are closed waters: June 1 through March 31 season. Trout: Minimum length fourteen inches.

From Henderson Boulevard Bridge upstream: June 1 through March 31 season. Selective gear rules. All species: Release all fish except trout greater than twenty inches in length.

Desire Lake (King County): Bass: Only bass less than twelve inches or over fifteen inches in length may be retained.

Devereaux Lake (Mason County): Last Saturday in April through October 31 season.

Devil's Lake (Jefferson County): Last Saturday in April through October 31 season.

Dewatto River (Mason County): All species: Release all fish. From Dewatto-Holly Road Bridge upstream: Selective gear rules.

From mouth to bridge on Bear Creek-Dewatto Road, additional November 1 through last day in February season.

Diamond Lake (Pend Oreille County): Last Saturday in April through October 31 season.

Dickey River (includes all forks) (Clallam County): June 1 through April 30 season. Trout: Minimum length fourteen inches. December 1 through April 30, one wild steelhead per day may be retained.

Dollar Lake (Grant County): March 1 through July 31 season.

Dosewallips River (Jefferson County), from mouth to Olympic National Park boundary about three-quarters mile downstream of falls: June 1 through last day in February season. All species: Release all fish except that up to two hatchery steelhead per day may be retained.

Dot Lake (Grant County): March 1 through July 31 season.

Downs Lake (Lincoln/Spokane counties): Last Saturday in April through September 30 season.

Dry Falls Lake (Grant County): Last Saturday in April through November 30 season. Selective gear rules. Trout: Daily limit one.

Duck Lake (Grays Harbor County): Crappie: Daily limit ten.

Duckabush River (Jefferson County), from mouth to the Olympic National Park Boundary: June 1 through last day in

February season. All species: Release all fish except that up to two hatchery steelhead per day may be retained.

Dungeness River (Clallam County):

From mouth to junction of Gray Wolf and Dungeness River, October 16 through last day in February season. Trout: Minimum length fourteen inches.

From junction of Gray Wolf River upstream to Gold Creek - Closed waters.

From junction of Gold Creek upstream to headwaters: Trout: Minimum length fourteen inches.

Dusty Lake (Grant County): March 1 through July 31 season.

East Twin River (Clallam County): June 1 through last day in February season. Trout: Minimum length fourteen inches.

Ebey Lake (Little Lake) (Snohomish County): Fly fishing only. Fishing from a floating device equipped with a motor prohibited. Trout: Daily limit one, minimum length eighteen inches.

Eightmile Lake (Chelan County): Trout: Daily limit five, not more than two mackinaw may be retained.

Elbow Lake (Stevens County): Last Saturday in April through October 31 season.

Elk River (Grays Harbor County), from the Highway 105 Bridge upstream: June 1 through last day in February season. Single point barbless hooks required October 1 through November 30 downstream of the confluence of the east and middle branches. Trout: Minimum length fourteen inches.

Ell Lake (Okanogan County): Last Saturday in April through October 31 season. Selective gear rules. Trout: Daily limit one.

Ellen Lake (Ferry County): Last Saturday in April through October 31 season.

Elochoman River (Wahkiakum County): Closed waters: Waters from 100 feet above the upper hatchery rack downstream to the Elochoman Hatchery Bridge located 400 feet below the upper hatchery rack; waters from a point 50 feet above to 100 feet below the outlet pipes from the most downstream Elochoman Hatchery rearing pond and extending 30 feet out from the south bank of the river; waters between the department of fish and wildlife temporary rack downstream to Foster (Risk) Road Bridge while rack is installed in the river; mainstem waters from the confluence of the west fork to source.

From mouth to West Fork: June 1 through March 15 season. Trout: Daily limit five, minimum length twelve inches, no more than two over twenty inches. Release wild cutthroat.

Elwha River (Clallam County): Closed waters: From south spillway on Aldwell Lake Dam downstream two hundred feet and from approximately fifty yards upstream to fifty yards downstream of Elwha Tribal Hatchery outfall as posted.

From mouth to two hundred feet below the south spillway on the Aldwell Lake Dam: June 1 through last day in

February season. Fishing from any floating device prohibited. Trout: Minimum length fourteen inches.

From Lake Aldwell upstream to four hundred feet below spillway at Lake Mills Dam, including all tributaries except Indian Creek: Selective gear rules. Trout: Minimum length twelve inches.

Empire Lake (Ferry County): Last Saturday in April through October 31 season.

Enchantment Park Ponds (Chelan County): Juveniles only.

Entiat River (Chelan County), from mouth to Entiat Falls: June 1 through August 31 season. Selective gear rules. Trout: Minimum length twelve inches, maximum length twenty inches. Whitefish: Additional season December 1 through March 31. Release all fish except whitefish. Selective gear rules.

Erie Lake (Skagit County): Last Saturday in April through October 31 season.

Failor Lake (Grays Harbor County): Last Saturday in April through October 31 season.

Fan Lake (Pend Oreille County): Last Saturday in April through September 30 season. Fishing from a floating device equipped with an internal combustion motor prohibited.

Fazon Lake (Whatcom County): Fishing from any floating device prohibited from first Friday in October through January 15. Channel catfish: Daily and possession limit two. Bass: Only bass less than twelve inches or over fifteen inches in length may be retained.

Finnel Lake (Adams County): Bass: Only bass less than twelve inches or over fifteen inches in length may be retained.

Fio Rito Lakes (Kittitas County): Fishing from a floating device equipped with an internal combustion engine prohibited.

Fish Lake (Chelan County): Trout: No more than two over fifteen inches in length may be retained.

Fish Lake (Ferry County): Last Saturday in April through October 31 season.

Fish Lake (Okanogan County): Last Saturday in April through October 31 season.

Fish Lake (Spokane County): Last Saturday in April through September 30 season. Fishing from a floating device equipped with an internal combustion motor prohibited.

Fisher Slough (Snohomish County):

From mouth to Highway 530 Bridge: Year around season. Trout: Minimum length fourteen inches. Wild steelhead may be retained December 1 through last day in February.

Upstream from Highway 530 Bridge: Trout: Minimum length fourteen inches.

Fishhook Pond (Walla Walla County): Last Saturday in April through October 31 season. Fishing from any floating device prohibited.

Fishtrap Creek (Whatcom County): From Koh Road to Bender Road: June 1 through October 31 season. Juveniles only.

Fishtrap Lake (Lincoln/Spokane counties): Last Saturday in April through September 30 season.

Flowing Lake (Snohomish County): Bass: Only bass less than twelve inches or over fifteen inches in length may be retained.

Forde Lake (Okanogan County): Last Saturday in April through October 31 season.

Fort Borst Park Lake (Lewis County): Last Saturday in April through last day in February season. Juveniles only.

Fortson Mill Pond # 2 (Snohomish County): Last Saturday in April through October 31 season. Juveniles only.

Fourth of July Lake (Adams/Lincoln counties): December 1 through March 31 season. Fishing from a floating device equipped with an internal combustion motor prohibited. Trout: No more than two over fourteen inches in length may be retained.

Franz Lake (Skamania County): Closed waters.

Frater Lake (Pend Oreille County): Last Saturday in April through October 31 season.

Frenchman Hills Lake (Grant County): February 1 through September 30 season.

Gadwall Lake (Grant County): March 1 through March 31 and September 1 through September 30 seasons.

Garfield Juvenile Pond (Whitman County): Juveniles only.

George Lake (Grant County): March 1 through July 31 season.

Geneva Lake (King County): Last Saturday in April through October 31 season.

Germany Creek (Cowlitz County), from mouth to end of Germany Creek Road (approximately five miles): June 1 through March 15 season. Trout: Minimum length twelve inches. Release wild cutthroat. Release all steelhead June 1 through October 31.

Gillette Lake (Stevens County): Last Saturday in April through October 31 season.

Gissberg Ponds (Snohomish County): Channel catfish: Daily limit 2, no minimum size.

Gobar Creek (tributary to Kalama River) (Cowlitz County): June 1 through March 15 season. Trout: Minimum length twelve inches. Release wild cutthroat.

Gold Creek, Gold Creek Pond and Outlet Channel (tributary to Keechelus Lake) (Kittitas County): Closed waters.

Gold Creek (Okanogan County): From mouth to Foggy Dew Creek: Selective gear rules.

Goldsborough Creek (Mason County): June 1 through last day in February season. Trout: Minimum length fourteen inches.

Goodman Creek (Jefferson County) outside Olympic National Park: June 1 through last day in February season. Trout, minimum length fourteen inches. December 1 through last day in February one wild steelhead per day may be retained.

Goodwin Lake (Snohomish County): Chumming permitted. Bass: Only bass less than twelve inches or over fifteen inches in length may be retained.

Goose Creek (Lincoln County), within the city limits of Wilbur: Year around season. Juveniles and holders of free licenses only.

Goose Lake, Lower (Adams County): Crappie: Not more than five over eight inches in length: Bluegill: Not more than five over six inches in length.

Gorst Creek (Kitsap County): Closed waters: From lower bridge on the old Belfair Highway upstream to source (including tributaries). From mouth upstream to lower bridge: Trout: Minimum length fourteen inches.

Gosnell Creek and tributaries (tributary to Lake Isabella) (Mason County): Trout: Minimum length fourteen inches.

Goss Lake (Island County): Last Saturday in April through October 31 season.

Grande Ronde River (Asotin County):

From mouth to County Road Bridge about two and one-half miles upstream: Year around season. Selective gear rules September 1 through May 31. Trout: Minimum length twelve inches, maximum length twenty inches.

From County Road Bridge upstream to Oregon state line and all tributaries: June 1 through August 31 season. Selective gear rules. Trout: Minimum length twelve inches. Additional season September 1 through April 15: Barbless hooks required. All tributaries: Closed waters. All species: Release all fish except steelhead with a missing adipose fin and a healed scar at the fin site.

Granite Creek and tributaries (Pend Oreille County): Closed waters.

Granite Lakes (near Marblemount) (Skagit County): Grayling: Release all grayling.

Gray Wolf River (Clallam County): From junction with Dungeness River to bridge at river mile 1.0 - Closed waters.

From bridge at river mile 1.0 upstream - selective gear rules. Trout: Minimum length fourteen inches.

Grays River (Wahkiakum County), from mouth to Highway 4 Bridge: November 15 through March 15 season; and from Highway 4 Bridge to mouth of South Fork: January 1 through March 15 season. All species: Release all fish except steelhead without an adipose fin and healed scar at the fin site. Trout: Minimum length twenty inches.

Grays River, East Fork (Wahkiakum County): Selective gear rules. Trout: Minimum length fourteen inches. Release cutthroat.

Grays River, West Fork (Wahkiakum County), downstream from Hatchery Road Bridge: June 1 - August 31 season. Trout: Additional January 1 through March 15 season downstream from Hatchery Road Bridge. Release all fish other than trout and all trout less than twenty inches in length.

Green Lake and Green Lake, Lower (Okanogan County): December 1 through March 31 season.

Green (Duwamish) River (King County):

From the First Avenue Bridge to Tacoma Headworks Dam: June 1 through last day in February season, except waters from the Auburn-Black Diamond Bridge downstream to the 8th St. N.E. Bridge in Auburn are closed September 1 through October 15 and waters from the Auburn-Black Diamond Bridge downstream to the Highway 18 Bridge are closed September 1 through October 31. Fishing from any floating device prohibited November 1 through last day in February. Trout: Minimum length fourteen inches. Wild steelhead may be retained July 1 through the last day in February.

From the SR 167 Freeway Bridge to the Tacoma Headworks Dam: Additional March 1 through March 15 season. Fishing from any floating device prohibited. Trout, minimum length fourteen inches.

Green River (Cowlitz County): Closed waters: All tributaries.

From mouth to 2800 Bridge: June 1 through November 30 season except closed from the water intake at the upper end of the hatchery grounds downstream to a point 1500 feet below the salmon hatchery rack during the period September 1 through November 30. All species: Release all fish except steelhead. Trout: Minimum length twenty inches.

From 2800 Bridge to source: Closed waters.

Greenwater River (King County), from mouth to Greenwater Lakes: Selective gear rules. Trout: Minimum length twelve inches.

Grimes Lake (Douglas County): June 1 through August 31 season. Selective gear rules, except fishing from a floating device equipped with an electric motor allowed. Trout: Daily limit one.

Grizzly Lake (Skamania County): Closed waters.

Halfmoon Lake (Adams County): March 1 through September 30 season.

Halfmoon Lake (Pend Oreille County): Last Saturday in April through October 31 season.

Hallin Lake (Adams County): Bass: Only bass less than twelve inches or over fifteen inches in length may be retained.

Hamilton Creek (Skamania County): June 1 through March 15 season. Trout: Minimum length twelve inches. Release wild cutthroat. All tributaries downstream from the Highway 14 Bridge: Closed waters.

Hamma Hamma River (Mason County):

From mouth to four hundred feet below falls: June 1 through last day in February season. Selective gear rules. All species: Release all fish.

Hammersley Inlet Freshwater Tributaries (Mason County), except Mill Creek: Closed waters.**Hampton Lakes, Lower and Upper (Grant County):** March 1 through July 31 season. Fishing from a floating device equipped with an internal combustion motor prohibited.**Hancock Lake (King County):** June 1 through October 31 season. All tributary streams and the upper third of the outlet are closed waters.**Harrison Pond (Skagit County):** Closed waters.**Hart Lake (Pierce County):** Bass: Only bass less than twelve inches or over fifteen inches in length may be retained.**Harvey Creek (tributary to Sullivan Lake) (Pend Oreille County):**

From mouth to Bridge 4830 on county road (about one and one-half miles): Closed waters.

From Bridge 4830 upstream: Selective gear rules.

Harvey Creek (tributary to Stillaguamish River) (Snohomish County): Closed waters.**Hatch Lake (Stevens County):** December 1 through March 31 season.**Hatchery Lake (Mason County):** Last Saturday in April through October 31 season.**Haven Lake (Mason County):** Last Saturday in April through October 31 season.**Hawk Creek and tributaries (Lincoln County):** Year around season.**Hays Creek and Ponds (Adams County):** March 1 through September 30 season.**Headgate Pond (Asotin County):** Last Saturday in April through October 31 season. Juveniles, seniors and holders of ((free)) disability licenses only.**Heart Lake (near Anacortes) (Skagit County):** Last Saturday in April through October 31 season.**Heins Lake (Kitsap County):** Closed waters.**Hemlock Lake (Trout Creek Reservoir) (Skamania County):** Closed waters.**Heritage Lake (Stevens County):** Last Saturday in April through October 31 season.**Hicks Lake (Thurston County):** Last Saturday in April through October 31 season.**Hog Canyon Lake (Spokane County):** December 1 through March 31 season. Trout: No more than two over fourteen inches in length may be retained.**Hoh River (Jefferson County), from mouth to mouth of South Fork:** June 1 through April 15 season. December 1 through

April 15, from Highway 101 to mouth of south fork, selective gear rules. Trout: Minimum length fourteen inches. December 1 through April 15, from mouth to Highway 101 one wild steelhead per day may be retained.

Hoh River South Fork (Jefferson County), outside Olympic National Park boundary: June 1 through April 15 season. December 1 through April 15, selective gear rules. Trout: Minimum length fourteen inches.**Hoko River (Clallam County):** Trout, minimum length fourteen inches. Release wild cutthroat upstream from upper Hoko Bridge (cement bridge on Lake Ozette Highway).

From mouth to upper Hoko Bridge: Additional November 1 through March 15 season. Trout: Minimum length fourteen inches. Wild steelhead may be retained December 1 through March 15.

From upper Hoko Bridge to Ellis Creek Bridge (river mile 18.5): Additional November 1 through March 31 season. Fly fishing only. Fishing from a floating device equipped with a motor prohibited. Trout: Release wild cutthroat.

Homestead Lake (Grant County): Selective gear rules. Trout: Daily limit one fish.**Hoquiam River, including all forks (Grays Harbor County):** June 1 through March 31 season. Single point barbless hooks required October 1 through November 15. Trout: Minimum length fourteen inches.**Horseshoe Lake (Clark/Cowlitz counties):** Trout: No more than 2 trout 20 inches or greater in length may be retained.**Horseshoe Lake (Jefferson County):** Last Saturday in April through October 31 season. Selective gear rules. Trout: Daily limit 1.**Horseshoe Lake (Kitsap County):** Last Saturday in April through October 31 season.**Horseshoe Lake (Pend Oreille County):** Last Saturday in April through October 31 season. Chumming permitted. Trout except kokanee: Daily limit five. Kokanee not counted in daily trout limit. Kokanee daily limit ten.**Horsethief Lake (Klickitat County):** Last Saturday in April through October 31 season.**Hourglass Lake (Grant County):** March 1 through March 31 and September 1 through September 30 seasons.**Howard Lake (Snohomish County):** Last Saturday in April through October 31 season.**Howell Lake (Mason County):** Last Saturday in April through October 31 season.**Hozomeen Lake (Whatcom County):** July 1 through October 31 season.**Huff Lake (Pend Oreille County):** Closed waters.**Humptulips River (Grays Harbor County), from mouth to forks:** June 1 through March 31 season. Single point barbless hooks required ((September 16)) October 1 through ((October 16)).

~~ber 31)) November 30.~~ Trout: Minimum length fourteen inches.

Humptulips River, East Fork (Grays Harbor County), from mouth to concrete bridge on Forest Service Road between Humptulips Guard Station and Grisdale: Trout: Minimum length fourteen inches.

Humptulips River, West Fork (Grays Harbor County): Trout: Minimum length fourteen inches. Mouth to Donkey Creek Road Bridge: Additional November 1 through March 31 season. Trout: Minimum length fourteen inches.

Hutchinson Lake (Adams County): March 1 through September 30 season. Fishing from a floating device equipped with an internal combustion engine prohibited.

I-82 Ponds, 1 and 2 (Yakima County): Walleye: Unlawful to retain walleye.

I-82 Ponds, 1 through 7 (Yakima County): Fishing from vessels equipped with internal combustion engines prohibited.

Icehouse Lake (Skamania County): Trout: No more than 2 trout 20 inches or greater in length may be retained.

Icicle River (Creek) (Chelan County):

From mouth to four hundred feet below Leavenworth National Fish Hatchery rack: Selective gear rules. Trout: Minimum length twelve inches, maximum length twenty inches. From Rock Island Bridge upstream to Leland Creek: Selective gear rules.

Indian Creek (tributary to Elwha River) (Clallam County), from mouth upstream to first Highway 101 crossing: Selective gear rules. Trout: Minimum length twelve inches.

Indian Creek (Yakima County): Closed waters.

Indian Heaven Wilderness Lakes (Skamania County): Trout: Daily limit three.

Issaquah Creek (King County): Closed waters.

Jameson Lake (Douglas County): Last Saturday in April through July 4 and October 1 through October 31 seasons.

Jasmine Creek (Okanogan County): Year-round season. Juveniles only.

Jefferson Park Pond (Walla Walla County): Juveniles only.

Jennings Park Pond (Snohomish County): Last Saturday in April through October 31 season. Juveniles only.

Jewitt Creek (Klickitat County): Juveniles only. Trout: Daily limit five, no minimum length.

Jimmy-Come-Lately Creek (Clallam County): June 1 through August 31 season. Trout: Minimum length fourteen inches.

Joe Creek (Grays Harbor County): Upstream from State Highway 109 Bridge to Ocean Beach Road Bridge: June 1 through November 30 season. Single barbless hooks required September 1 through November 30. Trout: Minimum length fourteen inches.

John's Creek (Mason County): Closed waters.

Johns River, including North and South Forks (Grays Harbor County): June 1 through last day in February season. Single point barbless hooks required October 1 through November 30. Trout: Minimum length fourteen inches.

Johnson Creek (tributary to Cowlitz River) (Lewis County): Selective gear rules. Trout: Minimum length ten inches.

Johnson Creek (Whatcom County), from Northern Pacific Railroad tracks to the Lawson Street footbridge in Sumas: Juveniles only.

Jump-Off Joe Lake (Stevens County): Last Saturday in April through October 31 season.

Kachess Lake (Reservoir) (Kittitas County): Chumming permitted. Trout except kokanee: Daily limit two, minimum length twelve inches. Kokanee not counted in daily trout limit. Kokanee daily limit sixteen. Burbot: Set line gear allowed.

Kachess River (Kittitas County): Lawful to fish to base of Kachess Dam. Selective gear rules. From Kachess Lake (Reservoir) upstream to Mineral Creek: Closed waters.

Kalaloch Creek (Jefferson County), outside Olympic National Park: June 1 through last day in February season. Trout: Minimum length fourteen inches. Wild steelhead may be retained December 1 through last day in February.

Kalama River (Cowlitz County): Trout((,)): Minimum length 14 inches. Release wild cutthroat.

From mouth upstream to one thousand feet below fishway at upper salmon hatchery: Year around season except during the period the temporary fish rack is installed. Waters from two hundred feet above to one thousand five hundred feet below the rack are closed waters. Fishing from a floating device equipped with a motor prohibited upstream of Modrow Bridge. Fly fishing only from the pipeline crossing to the posted deadline at the intake to the lower salmon hatchery. September 1 through October 31.

From one thousand feet below to one thousand feet above the fishway at upper salmon hatchery: Closed waters.

From one thousand feet above the fishway at the upper salmon hatchery to Summers Creek: Year around season. Selective gear rules.

From Summers Creek upstream to the 6420 Road at about one mile above the gate at the end of the county road: June 1 through March 31 season. Fly fishing only.

From 6420 Road to Kalama Falls: Closed waters.

Kalispell Creek and tributaries (Pend Oreille County): Last Saturday in April through October 31 season. Selective gear rules.

Kapowsin Lake (Pierce County): Bass: Only bass less than twelve inches or over fifteen inches in length may be retained.

Kathleen Lake (King County): Bass: Only bass less than twelve inches or over fifteen inches in length may be retained.

Keechelus Lake (Reservoir) (Kittitas County): Chumming permitted. Trout except kokanee: Daily limit two, minimum length twelve inches, additionally up to sixteen kokanee may be retained. Burbot: Set line gear allowed.

Kelsey Creek (tributary of Lake Washington) (King County): Closed waters.

Kennedy Creek (Thurston County), from mouth to four hundred feet below falls: June 1 through last day in February season. Trout: Minimum length fourteen inches.

Kennedy Creek Pond (Thurston County): Last Saturday in April through October 31 season.

Kettle River (Stevens County):

June 1 through October 31 season. Trout: Selective gear rules, minimum length 12 inches.

Additional season: November 1 through May 31. All species except whitefish: Selective gear rules and release all fish. Whitefish: Single hook only.

Ki Lake (Snohomish County): Last Saturday in April through October 31 season. Bass: Only bass less than twelve inches or over fifteen inches in length may be retained.

Kidney Lake (Skamania County): Last Saturday in April through last day in February season.

Kimball Creek (near Snoqualmie) (King County): Last Saturday in April through October 31 season. Juveniles only. Trout: No minimum length.

Kings Lake and tributaries (Pend Oreille County): Closed waters.

Kings Lake Bog (King County): Closed waters.

Klaus Lake (King County): Last Saturday in April through October 31 season, except the inlet and outlet to first Weyerhaeuser spur are closed waters.

Klickitat River (Klickitat County):

From mouth to Fisher Hill Bridge: June 1 through November 30 season. Trout: Minimum length twelve inches.

From Fisher Hill Bridge to four hundred feet above # 5 fishway: Closed waters.

From four hundred feet above # 5 fishway to the Yakama Indian Reservation boundary: June 1 through November 30 season, except waters from boundary markers above Klickitat salmon hatchery to boundary markers below hatchery are closed waters. Trout: Minimum length twelve inches. Whitefish: Additional December 1 through March 31 season. Release all fish except whitefish.

From the Yakama Indian Reservation boundary upstream to source, including all tributaries: Closed waters.

Klineline Ponds (Clark County): Trout: No more than 2 trout 20 inches in length or greater may be retained.

Koeneman Lake (Fern Lake) (Kitsap County): Last Saturday in April through October 31 season. Selective gear rules. All species: Release all fish.

Kress Lake (Cowlitz County): Fishing from a floating device equipped with an internal combustion motor prohibited.

Trout: No more than 2 trout 20 inches in length or greater may be retained. Bass: Only bass less than twelve inches or over eighteen inches in length may be retained.

Lacamas Creek (Clark County): Lawful to fish upstream to the base of Lacamas Lake Dam.

Lacamas Creek, tributary of Cowlitz River (Lewis County): June 1 through last day in February season. Trout: Minimum length fourteen inches. Release cutthroat.

Lake Creek, mouth to Three Prong Creek (Okanogan County): Selective gear rules. Trout: Maximum length twenty inches.

Langlois Lake (King County): Last Saturday in April through October 31 season.

Latah (Hangman) Creek (Spokane County): Year around season.

Lawrence Lake (Thurston County): Bass: Only bass less than twelve inches or over fifteen inches in length may be retained.

Leader Lake (Okanogan County): Last Saturday in April through September 30 season.

Ledbetter Lake (Pend Oreille County): Last Saturday in April through October 31 season.

Ledking Lake (Pend Oreille County): Last Saturday in April through October 31 season.

Leech Lake (White Pass area) (Yakima County): Fly fishing only. Fishing prohibited from floating devices equipped with motors. Trout: No more than two over twelve inches in length.

Lemna Lake (Grant County): March 1 through March 31 and September 1 through September 30 seasons.

Lenice Lake (Grant County): March 1 through October 31 season. Selective gear rules. Trout: Daily limit one.

Lena Lake, Lower (Jefferson County): Closed waters: Inlet stream from mouth upstream to footbridge (about one hundred feet).

Lenore Lake (Grant County): Closed waters: Area within two hundred yard radius of trash rack leading to the irrigation pumping station (south end of lake) and area approximately one hundred yards beyond the mouth of inlet stream to State Highway 17. March 1 through May 31 season: Selective gear rules, except fishing from a floating device equipped with an electric motor permitted. All species: Release all fish. Additional season June 1 through November 30: Selective gear rules, except fishing from a floating device equipped with an electric motor permitted. Trout: Daily limit one.

Leo Lake (Pend Oreille County): Last Saturday in April through October 31 season.

Lewis River (Clark County), from mouth to forks: Year around season. Trout: Minimum length twelve inches. Release wild cutthroat.

Lewis River, North Fork (Clark/Skamania counties):

From mouth to Johnson Creek: Year around season. Trout: Minimum length twelve inches. Release wild cutthroat.

From Johnson Creek to Colvin Creek: June 16 through August 15 and November 16 through April 30 seasons except those waters shoreward of the cable buoy and corkline at the mouth of the Lewis River Salmon Hatchery fish ladder are closed waters. Trout: Minimum length twelve inches. Release wild cutthroat.

From mouth of Colvin Creek to overhead powerlines at Merwin Dam: December 16 through September 30 season. Trout: Minimum length twelve inches. Release wild cutthroat.

From overhead powerlines at Merwin Dam to Merwin Dam: Closed waters.

From the cable crossing 1,300 feet below Yale Dam to Yale Dam: Closed waters.

Within Lewis River Power Canal and old Lewis River streambed between Swift No. 1 powerhouse and Swift No. 2 powerhouse: Last Saturday in April through October 31 season. Fishing from any floating device prohibited.

From Eagle Cliff Bridge to lower falls including all tributaries: Selective gear rules. All species: Release all fish.

Lewis River, East Fork (south) (Clark/Skamania counties): Closed waters: From the posted markers four hundred feet below to one hundred feet above Lucia Falls; from four hundred feet below to four hundred feet above Molton Falls; from four hundred feet below Horseshoe Falls to one hundred feet above Sunset Falls.

From mouth to four hundred feet below Horseshoe Falls: June 1 through March 15 season. Trout: Minimum length fourteen inches. Release cutthroat.

From one hundred feet above Sunset Falls to source: June 1 through December 31 season. Trout: Minimum length fourteen inches. Release cutthroat.

Mouth to posted markers at top boat ramp at Lewisville Park: Trout: Additional April 16 through May 31 season. Release all fish other than steelhead with a missing adipose fin and a healed scar at the fin site.

Liberty Lake (Spokane County): Last Saturday in April through September 30 season.

Lilliwaup River (Mason County): Mouth to 200 feet below falls: June 1 through August 31 season. Selective gear rules. All species: Release all fish.

Lilly Lake (Chelan County): Last Saturday in April through October 31 season. July 5 through October 31, selective gear rules, and all species: Release all fish.

Lincoln Pond (Clallam County): Juveniles only.

Little Ash Lake (Skamania County): Trout: No more than 2 trout 20 inches in length or greater may be retained.

Little Bear Creek (tributary of Sammamish River) (Snohomish/King counties): Closed waters.

Little Holco River (Clallam County): Selective gear rules. All species: Release all fish.

Little Klickitat River (Klickitat County), within Goldendale city limits: Last Saturday in April through October 31 season. Juveniles only. Trout: Daily limit five, no minimum length.

Little Lost Lake (Pend Oreille County): Last Saturday in April through October 31 season.

Little Naches River (Yakima County): Selective gear rules.

Little Nisqually River (Lewis County): Selective gear rules. Trout: Minimum length ten inches.

Little Quilcene River (Jefferson County), from mouth to the Little Quilcene River Bridge on Penny Creek Road, June 1 through last day in February season: Selective gear rules. All species: Release all fish.

Little Spokane River (Spokane County):

From mouth to SR 291 Bridge: Year around season.

From SR 291 Bridge upstream to the West Branch: April 30 through October 31 season. Whitefish: Additional December 1 through March 31 season. Release all fish except whitefish.

Little Twin Lake (Okanogan County): December 1 through March 31 season.

Little Twin Lake (Stevens County): Last Saturday in April through October 31.

Little Wenatchee River (Chelan County), from Lake Wenatchee to the falls below U.S. Forest Service Road 6700 Bridge at Riverside Campground: Selective gear rules. Trout: Maximum length twenty inches.

Little White Salmon River (Skamania County): Closed waters: From markers at federal fish hatchery a distance of one thousand five hundred feet upstream to fishway. Trout: Daily limit five.

Long Lake (Ferry County): Last Saturday in April through October 31 season. Fly fishing only. Unlawful to fish from floating devices equipped with motors.

Long Lake (Kitsap County): Bass: Only bass less than twelve inches or over fifteen inches in length may be retained.

Long Lake (Okanogan County): Last Saturday in April through September 30 season.

Long Lake (Spokane River Reservoir) (Spokane County): Bass: Release all bass May 1 through June 30.

Long Lake (Thurston County): Last Saturday in April through October 31 season.

Long's Pond (Thurston County): Juveniles only.

Loomis Lake (Pacific County): Last Saturday in April through October 31 season.

Loomis Pond (Grays Harbor County): Closed waters.

Loon Lake (Stevens County): Last Saturday in April through October 31 season. Trout except kokanee: Daily limit five, except no more than two over twenty inches in length may be

retained. Kokanee not counted in daily trout limit. Kokanee daily limit ten.

Lost Lake (Okanogan County): Unlawful to fish from a floating device equipped with an internal combustion engine.

Lost River (Okanogan County):

From one-quarter mile above bridge to mouth of Monument Creek: Selective gear rules. Trout: Minimum length twelve inches, maximum length twenty inches.

From mouth of Monument Creek to outlet of Cougar Lake: Selective gear rules. Trout: Legal to retain Dolly Varden/Bull Trout as part of trout daily limit. Dolly Varden/Bull Trout daily limit two, minimum length fourteen inches.

Love Lake (Clark County): Closed waters.

Lucas Slough (Skagit County): Closed waters.

Ludlow Lake (Jefferson County): Last Saturday in April to October 31 season.

Lyons Park Pond (at College Place) (Walla Walla County): Juveniles only.

Lyre River (Clallam County):

From mouth to falls near river mile 3: June 1 through last day in February season. Trout: Minimum length fourteen inches. From falls to source: Selective gear rules. All species: Release all fish.

Mad River (Chelan County), from mouth upstream to Jimmy Creek: Closed waters.

Maggie Lake (Mason County): Last Saturday in April through October 31 season.

Marie Lake (Hampton Sloughs) (Grant County): March 1 through July 31 season.

Margaret Lake (King County): Last Saturday in April through October 31 season.

Marshal Lake (Pend Oreille County): Last Saturday in April through October 31 season.

Martha Lake (Grant County): March 1 through July 31 season.

Martha Lake (Snohomish County): Last Saturday in April through October 31 season.

May Creek (tributary of Lake Washington) (King County): Closed waters.

McAllister Creek (Thurston County): Trout: Minimum length fourteen inches.

McCabe Pond (Kittitas County): Fishing from any floating device prohibited. All species: Five fish daily limit for all species combined.

McDonald Creek (Clallam County): Trout: Minimum length fourteen inches.

McDowell Lake (Stevens County): Last Saturday in April through October 31 season. Fly fishing only. Fishing from a

floating device equipped with a motor prohibited. All species: Release all fish.

McIntosh Lake (Thurston County): Last Saturday in April through October 31 season.

McLane Creek (Thurston County), from the south bridge on Highway 101 upstream: Trout: Minimum length fourteen inches.

McLane Creek Ponds (Thurston County): Last Saturday in April through October 31 season.

McMurray Lake (Skagit County): Last Saturday in April through October 31.

Medical Lake (Spokane County): Last Saturday in April through September 30 season. Selective gear rules. Trout: Daily limit two, minimum length fourteen inches.

Medical Lake, West (Spokane County): Last Saturday in April through September 30 season.

Melaney Creek (Mason County): Closed waters.

Melbourne Lake (Mason County): Last Saturday in April through October 31 season.

Merger Creek (Kittitas County), that portion within Ellensburg city limits: Juveniles only. Trout: Daily limit five, no minimum length.

Merger Slough (tributary of Lake Washington) (King County): Closed waters.

Merrill Lake (Cowlitz County): Fly fishing only. Unlawful to fish from a floating device equipped with an internal combustion engine. Trout: Daily limit two, maximum length twelve inches.

Merritt Lake (Chelan County): Trout: Daily limit sixteen.

Merry Lake (Grant County): March 1 through October 31 season. Selective gear rules. Trout: Daily limit one.

Methow River (Okanogan County):

From mouth upstream to the falls above Brush Creek: June 1 through August 31 season. Selective gear rules. Trout: Minimum length twelve inches, maximum length twenty inches. Whitefish: Additional season December 1 through March 31. Release all fish except whitefish. Selective gear rules.

Methow River tributaries except Chewuck, Lost and Twisp Rivers: Selective gear rules. Trout: Maximum length twenty inches.

Middle Nemah Pond (Pacific County): June 1 through October 31 season.

Mill Creek (Chelan County): Closed waters.

Mill Creek (Cowlitz County): Closed waters.

Mill Creek (Mason County): June 1 through last day in February season. Trout: Minimum length fourteen inches.

Mill Creek (Walla Walla County):

From mouth to 9th St. Bridge: June 1 through April 15 season. All species: Barbless hooks required and release all fish except steelhead with a missing adipose fin and a healed scar at the fin site September 1 through April 15.

From 9th St. Bridge to Roosevelt St. Bridge, within city limits of Walla Walla: Closed waters.

From Roosevelt St. Bridge to Bennington Lake flood diversion dam: Trout: Daily limit five.

From Bennington Lake flood diversion dam upstream, including all tributaries: All tributaries: Closed waters. Selective gear rules. Trout: Maximum length twenty inches.

Mill Creek Pond (Grays Harbor County): Juveniles only.

Mill Pond (Auburn) (King County): Last Saturday in April through October 31 season. Juveniles only.

Mill Pond (Pend Oreille County): Last Saturday in April through October 31 season.

Mima Creek (Thurston County): Selective gear rules. Trout: Minimum length twelve inches.

Mineral Creek (tributary to upper Kachess River) (Kittitas County), from mouth to Wilderness Boundary: Closed waters.

Mineral Creek (tributary to Nisqually River), and Mineral Creek, North Fork (Lewis County): Selective gear rules. Trout: Minimum length twelve inches.

Mineral Lake (Lewis County): Last Saturday in April through September 30 season.

Minter Creek (Pierce/Kitsap counties): Closed waters: Area from department intake dam downstream to mouth. Trout: Minimum length fourteen inches.

Mirror Lake (Grant County): Last Saturday in April through September 30 season.

Mission Lake (Kitsap County): Last Saturday in April through October 31 season.

Moclips River (Grays Harbor County), from mouth to outside the Quinault Indian Reservation: June 1 through last day in February season. Trout: Minimum length fourteen inches.

Monte Christo Lake (Snohomish County): June 1 through October 31 season. Selective gear rules.

Mooeses Pond (Pacific County): June 1 through October 31 season.

Moran Slough (including inlet and outlet streams) (Grant County): Closed waters.

Morgan Lake (Adams County): March 1 through September 30 season.

Morse Creek (Clallam County), from mouth to Port Angeles Dam: June 1 through last day in February season. Trout: Minimum length fourteen inches.

Moses Lake (Grant County): Crappie: Daily limit five, only crappie more than ten inches in length may be retained. Bluegill: Daily limit five, only bluegill more than eight inches in length may be retained.

Mosquito Creek (Jefferson County) outside Olympic National Park: June 1 through last day in February season. Trout: Minimum length fourteen inches. Wild steelhead may be retained December 1 through last day in February.

Muck Creek and tributaries (within Ft. Lewis Military Reservation) (Pierce County): Selective gear rules. Trout: Release all trout.

Mud Lake (Mason County): Last Saturday in April through October 31 season.

Mud Lake (Yakima County): Selective gear rules. Trout: Daily limit two.

Mudget Lake (Stevens County): Last Saturday in April through October 31 season.

Munn Lake (Thurston County): Last Saturday in April through October 31 season.

Muskegon Lake (Pend Oreille County): Last Saturday in April through October 31 season. Selective gear rules. Trout: Daily limit two.

Myron Lake (Yakima County): Selective gear rules. Trout: Daily limit two.

Mystic Lake (Pend Oreille County): Last Saturday in April through October 31 season.

Naches River (Yakima/Kittitas counties):

From the mouth to Little Naches River: Selective gear rules. Trout: Minimum length twelve inches, maximum length twenty inches. Whitefish: Additional December 1 through March 31 season. Release all fish except whitefish. Terminal gear restricted to one single hook.

From Little Naches River upstream: Selective gear rules. Trout: Minimum length twelve inches, maximum length twenty inches.

Naneum Creek (Kittitas County): Selective gear rules.

Naneum Pond (Kittitas County): Juveniles only.

Naselle River (Pacific/Wahkiakum counties), from Highway 101 Bridge upstream including all forks: Closed waters: Area from four hundred feet below falls in Sec. 6, T10N, R8W (Wahkiakum County) to falls, and September 1 through January 31, waters within four hundred feet both upstream and downstream of the entrance to the Naselle Salmon Hatchery.

Mainstem: Single point barbless hooks required July 1 through January 31 upstream from Highway 101 Bridge to Highway 4 Bridge and October 16 through January 31 upstream from Highway 4 Bridge to Crown Main Line (Salme) Bridge. All species: Release all fish except up to two hatchery steelhead per day may be retained.

From Highway 101 Bridge to mouth of North Fork: Additional November 1 through March 31 season. All species: Release all fish except up to two hatchery steelhead per day may be retained.

South Fork, from mouth to Bean Creek: Selective gear rules. All species: Release all fish. Additional November 1 through last day in February season.

North Fork: Selective gear rules. All species: Release all fish.

Nason Creek (Chelan County): Selective gear rules. From the mouth upstream to the downstream end of the Cascade Tunnel: Trout: Maximum length twenty inches.

From the downstream end of the Cascade Tunnel upstream to Smith Brook: Closed waters.

From Smith Brook to Stevens Creek: Selective gear rules.

Nason Creek Fish Pond (Chelan County): Juveniles and (disabled persons) holders of disability licenses only.

Negro Creek (Lincoln County): Year-round season from mouth at Sprague Lake to town of Sprague.

Negro Creek (Whitman County): Last Saturday in April through July 15 season.

Nemah River, North, Middle, and South: June 1 through last day in February season. Single point barbless hooks required on North Nemah upstream to the lower bridge on dead end lower Nemah Road October 1 through January 31, on Middle Nemah upstream to the Department of Natural Resources Bridge on Middle Nemah A-line Road July 1 through January 31, and on South Nemah upstream to confluence with Middle Nemah July 1 through January 31. Selective gear rules on Middle Nemah above DNR Bridge and on South Nemah above confluence with Middle Nemah. All species: Release all fish except up to two hatchery steelhead per day may be retained in the North Nemah.

Newhalem Ponds (Whatcom County): Closed waters.

Newaukum River, main river and South Fork (Lewis County): June 1 through March 31 season. Single point barbless hooks required November 16 through January 31. Trout: Minimum length fourteen inches mouth to Highway 508 Bridge near Kearny Creek.

Newaukum River, Middle Fork, mouth to Taucher Road Bridge (Lewis County): June 1 to March 31 season. Trout: Minimum length fourteen inches.

Newaukum River, North Fork (Lewis County):

From mouth to four hundred feet below Chehalis city water intake: June 1 through March 31 season. Trout: Minimum length fourteen inches.

From Chehalis city water intake upstream: Closed waters.

Niawiakum River (Pacific County): From Highway 101 Bridge to the South Bend/Palix Road Bridge: Single point barbless hooks required July 1 through January 31. All species: Release all fish.

Nile Lake (Pend Oreille County): Last Saturday in April through October 31 season.

Nisqually River (Pierce County), from mouth to four hundred feet below LaGrande Powerhouse: June 1 through November 30 season. Trout: Minimum length fourteen inches.

Nooksack River (Whatcom County), from mouth to forks, Middle Fork to Dam and North Fork to Nooksack Falls: June

1 through March 15 season. Fishing from floating devices equipped with motors prohibited on the North and Middle Forks November 1 through March 15. Trout: Minimum length fourteen inches.

Nooksack River, South Fork (Skagit/Whatcom counties): From mouth to Skookum Creek: June 1 through March 15 season. Selective gear rules. Trout: Minimum length fourteen inches.

From Skookum Creek upstream: Closed waters.

No Name Lake (Pend Oreille County): Last Saturday in April through October 31 season.

North Creek (tributary of Sammamish River) (Snohomish/ King counties): Closed waters.

North Elton Ponds (Yakima County): December 1 through March 31 season. Fishing from a floating device equipped with an internal combustion engine prohibited. Trout: Daily limit two.

North Lake (King County): Last Saturday in April through October 31 season.

North Potholes Reserve Ponds (Grant County): February 1 through the day before opening of waterfowl season. Fishing from any floating device prohibited, except float tubes permitted.

North River (Grays Harbor/Pacific counties), from Highway 105 Bridge upstream to Falls River: All species: Release all fish except up to two hatchery steelhead per day may be retained. Single point barbless hooks required July 1 through October 31 upstream to Salmon Creek.

From Highway 105 Bridge to Falls River: Additional November 1 through last day in February season. Single point barbless hooks required November 1 through January 31 upstream to Salmon Creek. All species: Release all fish except that up to two hatchery steelhead per day may be retained.

Upstream from Falls River: Selective gear rules. All species: Release all fish.

Northern State Hospital Pond (Skagit County): Last Saturday in April through October 31 season. Juveniles only.

Northwestern Reservoir (Klickitat/Skamania counties): Last Saturday in April through last day in February season.

Nunnally Lake (Grant County): March 1 through October 31 season. Closed waters: Outlet stream of Nunnally Lake. Selective gear rules. Trout: Daily limit one.

Oakland Bay freshwater tributaries (Mason County), except Goldsborough Creek (including Shelton Creek, Canyon Creek, Uncle John Creek, Campbell Creek, Melaney Creek, Deer Creek, John's Creek, and Cranberry Creek to Lake Limerick): Closed waters.

Ohanapecosh Creek (tributary to Cowlitz River) (Lewis/ Pierce counties): Selective gear rules. Trout: Minimum length twelve inches.

Ohop Lake (Pierce County): Bass: Only bass less than twelve inches or over fifteen inches in length may be retained.

Okanogan River (Okanogan County):

From the mouth to the highway bridge at Malott: Year around season. Trout: Release all trout. Selective gear rules. Trout: Maximum length twenty inches.

Closed waters: From the highway bridge at Malott upstream: From Zosel Dam downstream to one-quarter mile below the railroad trestle.

Old Fishing Hole Pond (Kent) (King County): Last Saturday in April through October 31 season. Juveniles only.

Olequa Creek (Lewis County): June 1 through last day in February season. Trout: Minimum length fourteen inches. Release cutthroat.

Osborne Lake (Mason County): Last Saturday in April through October 31 season.

Outlet Creek (Klickitat County): Trout: Daily limit five.

Owens Pond (Pacific County): June 1 through October 31 season.

Ozette River (Clallam County), outside Olympic National Park: June 1 through last day in February season. Trout: Minimum length fourteen inches. Wild steelhead may be retained December 1 through last day in February.

Packwood Lake (Lewis County): Closed waters: All inlet streams and outlet from log boom to dam. Last Saturday in April through October 31 season. Selective gear rules. Trout: Daily limit five, minimum length ten inches.

Padden Lake (Whatcom County): Last Saturday in April through October 31 season. Fishing from a floating device equipped with an internal combustion motor prohibited.

Palix River, including all forks (Pacific County): June 1 through last day in February season. All species: Release all fish. Single point barbless hooks required July 1 through January 31 upstream to the confluence of the south and middle forks. Above the confluence of the south and middle forks: Selective gear rules.

Palouse River and tributaries (Whitman County): Year around season.

Palmer Lake (Okanogan County): Bass: Only bass less than twelve inches or over fifteen inches in length may be retained. Burbot: Set line gear allowed.

Pampa Pond (Whitman County): Last Saturday in April through September 30 season. Fishing from any floating device prohibited.

Panhandle Lake (Mason County): Last Saturday in April through October 31 season.

Panther Creek (Chelan County): Closed waters.

Panther Creek (tributary to Wind River) (Skamania County): Closed waters.

Panther Lake (Kitsap/Mason counties): Last Saturday in April through October 31 season.

Para-Juvenile Lake (Adams/Grant counties): March 1 through July 31 season. Juveniles only.

Park Lake (Grant County): Last Saturday in April through September 30 season.

Parker Lake (Pend Oreille County): Last Saturday in April through October 31 season.

Pass Lake (Skagit County): Fly fishing only. Fishing from a floating device equipped with a motor prohibited. All species: Release all fish.

Pataha Creek (Garfield County):

Within the city limits of Pomeroy: Juveniles only.

From city limits of Pomeroy upstream: Selective gear rules.

Patterson Lake (Okanogan County): Last Saturday in April through October 31 season.

Pattison Lake (Thurston County): Last Saturday in April through October 31 season.

Peabody Creek (Clallam County): Last Saturday in April through October 31 season. Juveniles only.

Pearygin Lake (Okanogan County): Last Saturday in April through September 30 season.

Pend Oreille River (Pend Oreille County): Year around season. All sloughs within the boundaries of the Kalispell Reservation except Calispell Slough: Closed waters.

Perch Lake (Grant County): Last Saturday in April through September 30 season.

Percival Creek (Thurston County): Trout: Minimum length fourteen inches.

Petit Lake (Pend Oreille County): Last Saturday in April through October 31 season. Fishing from a floating device equipped with an internal combustion motor prohibited.

Phalon Lake (Stevens County): Closed waters.

Phantom Lake (King County): Bass: Only bass less than twelve inches or over fifteen inches in length may be retained.

Pheasant Lake (Jefferson County): Last Saturday in April to October 31 season.

Philippa Creek (tributary to N.F. Snoqualmie River) (King County): Closed waters.

Phillips Lake (Stevens County): Last Saturday in April through October 31 season.

Pilchuck Creek (Snohomish County), mouth to Highway 9 Bridge: June 1 through November 30 season. Selective fishing regulations. Trout: Minimum length fourteen inches. Additional December 1 through last day in February season. Trout: Minimum length fourteen inches. Wild steelhead may be retained.

Pilchuck River (Snohomish County)

From its mouth to five hundred feet downstream from the Snohomish City diversion dam: December 1 through last day in February season. Fishing from any floating device prohibited. Trout: Minimum length fourteen inches. Wild steelhead may be retained.

From 500 feet below diversion dam to diversion dam: Closed waters.

Pillar Lake (Grant County): March 1 through March 31 and September 1 through September 30 seasons.

Pine Lake (King County): Last Saturday in April through October 31 season.

Pine Lake (Mason County): Last Saturday in April through October 31 season.

Pioneer Ponds (tributary to Stillaguamish River) (Snohomish County): Closed waters.

Pipers (Carkeek) Creek (King County), from its mouth to its source, including tributaries: Closed waters.

Pleasant Lake (Clallam County): Trout: Kokanee minimum length eight inches, maximum length twenty inches.

Plummer Lake (Lewis County): Last Saturday in April through last day in February season.

Poacher Lake (Grant County): March 1 through March 31 and September 1 through September 30 seasons.

Portage Creek (tributary to Stillaguamish River) (Snohomish County): Closed waters.

Potholes Reservoir (Grant County): Crappie and bluegill: Combined daily limit twenty-five fish.

Potter's Pond (Stevens County): Last Saturday in April through October 31 season.

Pratt River (tributary to Middle Fork Snoqualmie) (King County): Selective gear rules. All species: Release all fish.

Prices Lake (Mason County): Last Saturday in April through October 31 season. Selective gear rules. All species: Release all fish.

Promised Land Pond (Grays Harbor County): June 1 through October 31 season.

Purdy Creek (Mason County): June 1 through August 15 season. Selective gear rules. All species: Release all fish.

Pysht River (Clallam County): June 1 through last day in February season. Trout: Minimum length fourteen inches. Wild steelhead may be retained December 1 through last day in February.

Pysht River South Fork (Clallam County): Trout: Minimum length fourteen inches.

Puyallup River (Pierce County):

From mouth to the Electron power plant outlet: June 1 through January 31 season. Trout: Minimum length fourteen inches. Wild steelhead may be retained December 1 through January 31.

From mouth to the Soldier's Home Bridge in Orting: Additional February 1 through March 31 season. Trout: Minimum length fourteen inches.

Quail Lake (Adams County): Fly fishing only. Fishing from any floating device equipped with a motor prohibited. All species: Release all fish.

Quarry Pond (Walla Walla County): Fishing from any floating device prohibited.

Quilcene River (Jefferson County):

From mouth to upper boundary of Falls View Campground June 1 through last day in February season: August 16 through December 31 - closed to fishing from one hour after official sunset to one hour before official sunrise in those waters upstream from Rogers Street to the Highway 101 Bridge. Selective gear rules. All species: Release all fish.

From Highway 101 Bridge upstream to the electric weir at the Quilcene National Fish Hatchery: Closed waters.

Quillayute River (Clallam County): June 1 through April 30 season. Trout: Minimum length fourteen inches. December 1 through April 30, one wild steelhead per day may be retained.

Quinault River, Upper (Jefferson County), from mouth at upper end of Quinault Lake to the National Park boundary: June 1 through March 31 season. Trout: Minimum length fourteen inches. Wild steelhead may be retained December 1 through March 31.

Quincy Lake (Grant County): March 1 through July 31 season.

Raging River (King County), from its mouth to the Highway 18 Bridge: June 1 through last day in February season. Trout: Minimum length fourteen inches. Wild steelhead may be retained December 1 through last day in February.

Rainbow Lake (Columbia County): March 1 through October 31 season. Fishing from any floating device prohibited.

Rapjohn Lake (Pierce County): Last Saturday in April through October 31 season. Bass: Only bass less than twelve inches or over fifteen inches in length may be retained.

Rat Lake (Okanogan County): December 1 through March 31 season.

Rattlesnake Creek (Yakima County): Selective gear rules. All species: Release all fish.

Rattlesnake Lake (King County): Last Saturday in April through October 31 season. Selective gear rules, except fishing from a floating device equipped with an electric motor allowed.

Ravensdale Lake (King County): Last Saturday in April through October 31 season. Selective gear rules. Trout: Daily limit two, minimum length twelve inches.

Reflection Pond (Okanogan County): Last Saturday in April through October 31 season.

Renner Lake (Ferry County): Last Saturday in April through October 31 season.

Ridley Lake (Whatcom County): July 1 through October 31 season. Selective gear rules. Trout: Daily and possession limit one, minimum length eighteen inches.

Riffe Lake (Reservoir) (Lewis County): Lawful to fish up to the base of Swofford Pond Dam.

Rigley Lake (Stevens County): Last Saturday in April through October 31 season. Selective gear rules. Trout: Daily limit two, minimum length fourteen inches.

Riley Lake (Snohomish County): Last Saturday in April through October 31 season.

Rimrock Lake (Reservoir) (Yakima County): Chumming permitted. Trout except kokanee: Daily limit five. Kokanee not counted in daily trout limit. Kokanee daily limit sixteen.

Ringold Springs Creek (Hatchery Creek) (Franklin County): Closed waters.

Robbins Lake (Mason County): Last Saturday in April through October 31 season.

Rock Creek (below Landsburg) (King County): Closed waters.

Rock Creek (Skamania County): June 1 through March 15 season. Trout: Minimum length twelve inches. Release wild cutthroat.

Rocky Ford Creek and Ponds (Grant County): Fly fishing only. Fishing from bank only (no wading). All species: Release all fish.

Rocky Lake (Stevens County): Last Saturday in April through October 31 season. June 1 through October 31 selective gear rules and all species: Release all fish.

Roosevelt Lake (Ferry/Lincoln/Stevens counties): All species: Closed February 1 through May 31 in San Poil arm upstream from mouth of Manilla Creek, and April 1 through May 31 in Kettle arm upstream to Barstow Bridge. Trout: No more than two over twenty inches in length. Only kokanee with a missing adipose fin and healed scar at the fin site may be retained. Walleye: No minimum size. Daily limit 8 fish not more than one of which may be longer than 20 inches. Release walleye 16 to 20 inches in length.

Rose Lake (Mason County): Last Saturday in April through October 31 season.

Ross Lake (Reservoir) (Whatcom County): July 1 through October 31 season. Selective gear rules, except fishing from a floating device equipped with a motor allowed. Trout: Daily limit three, possession limit six, minimum length thirteen inches.

Ross Lake tributary streams (Whatcom County), except Big Beaver Creek and Ruby Creek: Closed waters: From closed water markers near mouth upstream for one mile. Above closed water marker in tributaries not listed as closed: July 1 through October 31 season.

Round Lake (Okanogan County): Last Saturday in April through September 30 season.

Rowland Lakes (Klickitat County): Last Saturday in April through last day in February season.

Royal Lake (Adams County): Last Saturday in April through September 30 season. Fishing from a floating device equipped with an internal combustion motor prohibited.

Royal Slough (including Marsh Unit IV impoundments) (Adams County): Closed waters.

Ruby Creek (tributary to Ross Lake) (Whatcom County): Closed waters.

Rufus Woods Lake (Douglas County): Trout: Daily limit two.

Sacheen Lake (Pend Oreille County): Last Saturday in April through October 31 season.

Saddle Mountain Lake (Grant County): Closed waters.

Sago Lake (Grant County): March 1 through March 31 and September 1 through September 30 seasons.

Salmon Creek (Clark County), from mouth to 72nd Avenue N.E.: June 1 through October 31 season. Trout: Minimum length twelve inches. Release all steelhead and wild cutthroat. Additional season: November 1 through March 15. Selective gear rules. All species: Release all fish.

Salmon Creek, including all forks (Jefferson County): Closed waters.

Salmon Creek, North Fork and West Fork from mouth to South Fork (Okanogan County): Selective gear rules.

Salmon Creek (tributary of Naselle River) (Pacific County): June 1 through last day in February season. Selective gear rules. All species: Release all fish.

Salmon Creek (Thurston County): Selective gear rules. Trout: Minimum length twelve inches.

Salmon River (Jefferson County): June 1 through last day in February season. Trout: Minimum length fourteen inches. Wild steelhead may be retained November 1 through last day in February.

Salt Creek (Clallam County): Trout: Minimum length fourteen inches.

From mouth to bridge on Highway 112: Additional November 1 through last day in February season. Trout: Minimum length fourteen inches.

Samish Lake (Whatcom County): Trout: Cutthroat trout daily limit two, minimum length fourteen inches.

Samish River (Whatcom County):

From its mouth to the old Highway 99 Bridge and from the department rack to the Hickson Bridge: June 1 through March 15 season. Trout: Minimum length fourteen inches.

From Highway 99 Bridge to department salmon rack: Closed waters.

Sammamish Lake (King County): Trout: No more than two over fourteen inches in length. Release all kokanee. Kokanee/sockeye under fifteen inches are kokanee while those fifteen inches and over are sockeye salmon. December 1 through

June 30: Release all steelhead and rainbow trout over twenty inches in length.

Sammamish River (Slough) (King County), from the 68th Avenue N.E. Bridge to Lake Sammamish: Closed waters: All tributaries. June 1 through August 31 season. Selective gear rules. Trout: Release all trout.

Sandyshore Lake (Jefferson County): Last Saturday in April to October 31 season.

Sarge Hubbard Park Pond (Yakima County): Juveniles and holders of disability licenses only.

Satsop Lakes (Grays Harbor County): Last Saturday in April through October 31 season.

Satsop River, including all forks (Grays Harbor County): Selective gear rules on East Fork upstream from mouth of Bingham Creek. All open periods: Trout: Minimum length twelve inches. Release wild cutthroat, except on east fork above Bingham Creek.

From mouth to bridge at Schafer Park: Additional November 1 through March 31 season. Single point barbless hooks required September 16 through October 31.

Middle Fork (Turnow Branch), from mouth to Cougar-Smith Road: Additional November 1 through last day in February season. West Fork, from mouth to Cougar-Smith Road: Additional November 1 through last day in February season.

Sauk River (Skagit/Snohomish counties):

From mouth to the mouth of the White Chuck River: June 1 through last day in February season. Trout except Dolly Varden/Bull Trout: Minimum length fourteen inches. Legal to retain Dolly Varden/Bull Trout as part of trout daily limit, minimum length twenty inches. Wild steelhead may be retained December 1 through last day in February.

From the mouth of the White Chuck River to headwaters, including North and South Forks: Selective gear rules. Trout except Dolly Varden/Bull Trout: Minimum length fourteen inches. Legal to retain Dolly Varden/Bull Trout as part of trout daily limit, minimum length twenty inches.

From mouth to the Darrington Bridge: Additional March 1 through April 30 season. Selective gear rules. All species: Release all fish.

Sawyer, Lake (King County): Chumming permitted.

Scabrock Lake (Grant County): March 1 through July 31 season.

Schaefer Lake (Chelan County): Trout: Daily limit sixteen.

Sekiu River (Clallam County): All open periods: Trout: Minimum length fourteen inches.

From mouth to forks: Additional November 1 through last day in February season.

Shady Lake (King County): June 1 through October 31 season. Trout: No more than one over fourteen inches in length.

Shannon, Lake (Skagit County): Last Saturday in April through October 31 season. Chumming permitted. Trout: Minimum length six inches and maximum length eighteen inches.

Shellneck Creek (Yakima County): Closed waters.

Shelton Creek (Mason County): Closed waters.

Sherman Creek (Ferry County):

From the mouth at Lake Roosevelt upstream to four hundred feet above the water diversion dam for the hatchery: Closed waters, except December 1 through August 31 season from the mouth upstream to the hatchery boat dock.

Sherry Lake (Stevens County): Last Saturday in April through October 31 season.

Sherwood Creek (Mason County): Trout: Minimum length fourteen inches.

Sherwood Creek Mill Pond (Mason County): June 1 through October 31 season. Trout: Minimum length 14 inches, daily limit 2 fish.

Shiner Lake (Adams County): March 1 through September 30 season. Fishing from a floating device equipped with an internal combustion motor prohibited.

Shoe Lake (Mason County): Last Saturday in April through October 31 season.

Shoecraft Lake (Snohomish County): Bass: Only bass less than twelve inches or over fifteen inches in length may be retained.

Shoveler Lake (Grant County): March 1 through March 31 and September 1 through September 30 seasons.

Shye Lake (Grays Harbor County): June 1 through October 31 season.

Sidley Lake (Okanogan County): Trout: Daily limit two.

Siebert Creek (Clallam County): Trout: Minimum length fourteen inches.

Silent Lake (Jefferson County): Last Saturday in April through October 31 season.

Silver Creek (tributary to Cowlitz River) (Lewis County), mouth to USFS Road 4778: Selective gear rules. Trout: Minimum length twelve inches.

Silver Lake (Cowlitz County): Use of water dogs or salamanders for fishing prohibited. Bass: Minimum length fourteen inches.

Silver Lake (Pierce County): Last Saturday in April through October 31 season. Bass: Only bass less than twelve inches or over fifteen inches in length may be retained.

Silver Lake (Whatcom County): Last Saturday in April through October 31 season.

Similkameen River (Okanogan County):

From mouth to Enloe Dam: June 1 through August 31 season. Selective gear rules. Trout: Minimum length twelve inches, maximum length twenty inches. Additional season December 1 through March 31. Selective gear rules. Trout: Release all trout.

From Enloe Dam to Canadian border: Whitefish: Additional December 1 through March 31 season. Release all fish except whitefish.

Sinlahekin Creek (Okanogan County), from Palmer Lake to Cecile Creek bridge: June 1 through August 31 season. Selective gear rules. Whitefish: Additional December 1 through March 31 season. Release all fish except whitefish.

Sixteen Lake (Skagit County): Last Saturday in April through October 31 season.

Skagit River (Skagit/Whatcom counties):

From mouth to the Memorial Highway Bridge (Highway 536 at Mt. Vernon): Year around season. Trout except Dolly Varden/Bull Trout: Minimum length fourteen inches. Release steelhead March 1 through May 31. Legal to retain Dolly Varden/Bull Trout as part of trout daily limit, minimum length twenty inches. Wild steelhead may be retained December 1 through last day in February.

From Memorial Highway Bridge (Highway 536 at Mt. Vernon) upstream to pipeline crossing at Sedro Woolley: June 1 through March 31 season. Trout except Dolly Varden/Bull Trout: Minimum length fourteen inches. Legal to retain Dolly Varden/Bull Trout as part of trout daily limit, minimum length twenty inches. Wild steelhead may be retained December 1 through last day in February.

From pipeline crossing at Sedro Woolley to Bacon Creek: June 1 through March 15 season except closed June 1 through August 31 between a line 200 feet above the east bank of the Baker River to a line 200 feet below the west bank of the Baker River. Trout except Dolly Varden/Bull Trout: Minimum length fourteen inches. Legal to retain Dolly Varden/Bull Trout as part of the trout daily limit, minimum length twenty inches. Wild steelhead may be retained December 1 through last day in February.

From Bacon Creek to Gorge Powerhouse: June 1 through last day in February season. Trout except Dolly Varden/Bull Trout: Minimum length fourteen inches. Legal to retain Dolly Varden/Bull Trout as part of the trout daily limit, minimum length twenty inches. Wild steelhead may be retained December 1 through last day in February.

From the Gorge Powerhouse to Gorge Dam: Closed waters.

From the Dalles Bridge at Concrete to the mouth of Bacon Creek: Additional March 16 through April 30 season. Selective gear rules, except lawful to fish from a floating device equipped with a motor but not while under power. All species: Release all fish.

Skamokawa Creek (Wahkiakum County), mouth to forks just below Oatfield and Middle Valley Road: November 1 through March 15 season. All species: Release all fish other than steelhead. Trout: Minimum length twenty inches.

Skate Creek (tributary to Cowlitz River) (Lewis County): Trout: Daily limit five, no more than one over twelve inches in length.

Skokomish River (Mason County), mouth to forks: June 1 through last day in February season. All species: Release all

fish except that up to two hatchery steelhead per day may be retained.

Skokomish River, South Fork (Mason County):

From mouth to mouth of Church Creek: June 1 through last day in February season. All species: Release all fish except up to two hatchery steelhead per day may be retained.

From mouth of Church Creek to headwaters: Selective gear rules. Trout: Minimum length twelve inches.

Skokomish River, North Fork (Mason County):

From mouth to lower dam: June 1 through last day in February season. All species: Release all fish except up to two hatchery steelhead per day may be retained.

Above Lake Cushman, mouth to Olympic National Park boundary: June 1 through August 31 season. Selective gear rules. Trout: Release all fish.

Skookum Creek (Mason County): June 1 through last day in February season. Trout: Minimum length fourteen inches.

Skookum Lakes, North and South (Pend Oreille County): Last Saturday in April through October 31 season.

Skookumchuck Reservoir (Thurston County): June 1 through October 31 season. Trout: Daily limit two, minimum length twelve inches.

Skookumchuck River (Thurston County):

From mouth to four hundred feet below the outlet of the PP&L/WDFW steelhead rearing pond located at the base of the Skookumchuck Dam: Single point barbless hooks required October 16 through November 15. June 1 through April 30 season. Trout: Minimum length fourteen inches.

From Skookumchuck Reservoir upstream and all tributaries: Selective gear rules. Trout: Minimum length twelve inches.

Skykomish River (Snohomish County):

From mouth to mouth of Sultan River: June 1 through last day in February season. Fishing from any floating device prohibited November 1 through last day in February from the boat ramp below Lewis Street Bridge at Monroe downstream two thousand five hundred feet. Trout except Dolly Varden/Bull Trout: Minimum length fourteen inches. Legal to retain Dolly Varden/Bull Trout as part of trout daily limit, minimum length twenty inches. Wild steelhead may be retained December 1 through last day in February. Additional March 1 through April 30 season: Selective gear rules. Fishing from any floating device prohibited from the boat ramp below Lewis Street Bridge at Monroe downstream two thousand five hundred feet. All species: Release all fish.

From the mouth of the Sultan River to the forks: June 1 through March 31 season, except closed June 1 to 8:00 a.m. August 1 in those waters one thousand five hundred feet upstream and one thousand feet downstream of the outlet at Skykomish Rearing Ponds. Fishing from any floating device prohibited in the area one thousand five hundred feet upstream and one thousand feet downstream of the outlet at Skykomish Rearing Ponds. Trout except Dolly Varden/Bull Trout: Minimum length fourteen inches. Legal to retain Dolly Varden/Bull Trout as part of trout daily limit, mini-

mum length twenty inches. Wild steelhead may be retained December 1 through last day in February.

Skykomish River, North Fork (Snohomish County):

From mouth to one thousand feet downstream from Bear Creek Falls: June 1 through last day in February season. Trout: Minimum length fourteen inches. Wild steelhead may be retained December 1 through last day in February.

From one thousand feet below Bear Creek Falls to Deer Falls: Closed waters.

Skykomish River, South Fork (King/Snohomish counties):

From mouth to six hundred feet downstream from the Sunset Falls Fishway: June 1 through last day in February season. Trout: Minimum length fourteen inches. Wild steelhead may be retained December 1 through last day in February.

From a point six hundred feet downstream of the Sunset Falls Fishway to the Sunset Falls Fishway: Closed waters.

From Sunset Falls to source: June 1 through November 30 season. Selective gear rules. Trout: Minimum length fourteen inches. Whitefish: Additional December 1 through last day in February season. Release all fish other than whitefish.

Smith Creek (near North River) (Pacific County): June 1 through last day in February season. Single point barbless hooks required July 1 through January 31 upstream to the Highway 101 Bridge. Trout: Minimum length fourteen inches. All species: Release all fish except up to two hatchery steelhead per day may be retained.

Snake River: Year around season. Closed to the taking of all trout April 1 through June 15. Trout: Daily limit six, minimum length ten inches, no more than two over twenty inches. Release all steelhead June 16 through August 31. Barbless hooks required when fishing for steelhead.

Closed waters: Within four hundred feet of the base of any dam and within a four hundred foot radius around the fish ladder entrance at Lyons Ferry Hatchery, within a two hundred foot radius upstream of the fish ladder exit above Lower Granite Dam, and within an area one thousand two hundred feet downstream from the base of the west lock gate at Little Goose Dam on the south bank of the Snake River and one hundred feet out into the river from said river bank.

Snipe Lake (Grant County): March 1 through March 31 and September 1 through September 30 seasons.

Snohomish River (Snohomish County), including all channels, sloughs, and interconnected waterways, but excluding all tributaries: June 1 through March 31 season. Trout except Dolly Varden/Bull Trout: Minimum length fourteen inches. Legal to retain Dolly Varden/Bull Trout as part of trout daily limit, minimum length twenty inches. Wild steelhead may be retained December 1 through last day in February.

Snoqualmie River (King County):

From mouth to the falls: June 1 through March 31 season, except waters within the Puget Power tunnel at the falls and within fifty feet of any point on Puget Power's lower Plant # 2 building (north bank) are closed waters. June 1 through November 30 selective gear rules, except fishing from a floating device equipped with a motor allowed. Fish-

ing from any floating device prohibited November 1 through March 31 from the mouth of Tokul Creek downstream to the boat ramp at Plumb access, about one-quarter mile. Trout: Minimum length fourteen inches. Wild steelhead may be retained December 1 through last day in February.

From Snoqualmie Falls, including the North and South Forks: Selective gear rules. Trout: Minimum length ten inches. Additional November 1 through May 31 season. Selective gear rules. All species: Release all fish.

Snoqualmie Middle Fork from mouth to source including all tributaries: June 1 through May 31 season. Selective gear rules. All species: Release all fish.

Snow Creek (Jefferson County), including all tributaries except Crocker Lake: Closed waters.

Sol Duc River (Clallam County): June 1 through April 30 season. November 1 through April 30, selective gear rules from the concrete pump station at the Soleduck Hatchery to the Highway 101 Bridge downstream from Snider Creek. Trout: Minimum length fourteen inches. December 1 through April 30, from mouth to the concrete pump station at the Soleduck Hatchery, one wild steelhead per day may be retained.

Sooes River (Suez River) (Clallam County): June 1 through last day in February season. Trout: Minimum length fourteen inches. Wild steelhead may be retained December 1 through last day in February.

Soos Creek (King County), from mouth to salmon hatchery rack: June 1 through October 31 season. Trout: Minimum length fourteen inches. September 1 through October 31 - closed to fishing from one hour after official sunset to one hour before official sunrise in those waters downstream from the bridge near the hatchery residence.

South Bend Mill Pond (Pacific County): Juveniles only.

South Prairie Creek (Pierce County), mouth to Page Creek: Closed waters.

Spada Lake (Reservoir) (Snohomish County): Last Saturday in April through October 31 season. Selective gear rules except fishing from a floating device equipped with an electric motor permitted. Trout: Minimum length twelve inches.

Spada Lake (Reservoir) tributaries (Snohomish County): Closed waters.

Spanaway Lake outlet downstream to the dam (approximately 800 feet) (Pierce County): Year around season.

Spearfish Lake (Klickitat County): Last Saturday in April through last day in February season.

Spectacle Lake (Kittitas County): Trout: Daily limit sixteen.

Spectacle Lake (Okanogan County): March 1 through July 31 season.

Spirit Lake (Skamania County): Closed waters.

Spokane River (Spokane County):

From SR 25 Bridge upstream to the Seven Mile Bridge, except Long Lake, formed by Long Lake Dam (see also Long

Lake): Year around season except walleye. Trout: Daily limit five, no more than two over twenty inches in length. Walleye: Daily limit eight, no more than one over twenty inches in length. Release walleye sixteen inches to twenty inches in length, and April 1 through May 31 release all walleye.

From Seven Mile Bridge upstream to the Monroe Street Dam: Year around season. Selective gear rules. Trout: Daily limit one. Release wild trout.

From Monroe Street Dam upstream to Upriver Dam: Year around season.

From Upriver Dam upstream to the Idaho/Washington state line: Selective gear rules, except fishing from a floating device equipped with a motor permitted. Trout: Daily limit one, minimum length 12 inches.

Sportsman's Lake (San Juan County): Bass: Only bass less than twelve inches or over fifteen inches in length may be retained.

Sprague Lake (Adams/Lincoln counties):

Waters northeast of the lakeside edge of the reeds to Danekas Road: Closed waters: Inlet stream (Negro Creek), April 1 through June 15. Bass: Only bass less than twelve inches or over fifteen inches in length may be retained.

Waters southeast of the lakeside edge of the reeds to Danekas Road: July 1 through September 15 season. Bass: Only bass less than twelve inches or over fifteen inches in length may be retained.

Spring Creek (Klickitat County): Trout: Daily limit five.

Spring Lake (Columbia County): March 1 through October 31 season. Fishing from any floating device prohibited.

Spring Lake (King County): Bass: Only bass less than twelve inches or over fifteen inches in length may be retained.

Spring Lakes (Grant County): March 1 through July 31 season.

Squalicum Lake (Whatcom County): Fly fishing only. Fishing from a floating device equipped with a motor prohibited. Trout: Daily limit two.

Starvation Lake (Stevens County): Last Saturday in April through May 31 season. Additional June 1 through October 31 season. Selective gear rules. All species: Release all fish.

Steel Lake (King County): Last Saturday in April through October 31 season.

Sthekin River (Chelan County), from the mouth to Agnes Creek: July 1 through October 31 season. Selective gear rules. Trout: Minimum length fifteen inches. Additional March 1 through June 30 season. Selective gear rules. All species: Release all fish.

Stetattle Creek (Whatcom County), from its mouth to mouth of Bucket Creek (one and one-half miles upstream): Closed waters.

Stevens Creek (Grays Harbor County), mouth to Highway 101 Bridge: June 1 through last day in February season. Trout: Minimum length fourteen inches.

Stevens, Lake (Snohomish County): Chumming permitted. Bass: Daily limit one, minimum length eighteen inches.

Steves Lake (Mason County): Last Saturday in April through October 31 season.

Stillaguamish River (Snohomish County):

From mouth to Warm Beach-Stanwood Highway, including all sloughs: Year around season. Trout: Minimum length fourteen inches. Wild steelhead may be retained December 1 through last day in February.

From Warm Beach-Stanwood Highway to the forks, except from the barrier dam (downstream of I-5) downstream two hundred feet which is closed waters: June 1 through last day in February season. Selective gear rules June 1 through November 30. Closed to fishing from one hour after official sunset to one hour before official sunrise. Trout: Minimum length twenty inches June 1 through November 30. Release all fish except trout with a missing adipose fin and a healed scar at the fin site. Minimum length fourteen inches December 1 through last day in February and wild steelhead may be retained.

Stillaguamish River, North Fork (Snohomish County), from mouth to Swede Heaven Bridge: March 1 through November 30 all species: Fly fishing only and release all fish other than trout greater than twenty inches in length that are missing the adipose fin and have a healed scar at the fin site. Fishing from any floating device prohibited upstream of the Highway 530 Bridge at mile post 28.8 (Cicero Bridge). December 1 through last day in February: Trout: Minimum length fourteen inches and wild steelhead may be retained. Fishing from any floating device prohibited upstream of the Highway 530 Bridge at mile post 28.8 (Cicero Bridge).

Stillaguamish River, South Fork (Snohomish County):

From mouth to four hundred feet downstream of the outlet to fishway at Granite Falls: June 1 through last day in February season. Trout: Minimum length fourteen inches. Wild steelhead may be retained December 1 through last day in February.

From four hundred feet below the outlet of the end of the fishway to Mt. Loop Highway bridge above Granite Falls: Closed waters.

From Mt. Loop Highway Bridge above Granite Falls to source: June 1 through November 30 season.

Storm Lake (Snohomish County): Last Saturday in April through October 31 season.

Stratford/Brook Lake (Grant County): February 1 through September 30 season.

Stump Lake (Mason County): Last Saturday in April through October 31 season. Fishing from a floating device equipped with an internal combustion engine prohibited.

Suiattle River (Skagit County): Trout: Legal to retain Dolly Varden/Bull Trout as part of trout daily limit, minimum length twenty inches.

Sullivan Creek (Pend Oreille County), from Mill Pond upstream: Selective gear rules.

Sultan River (Snohomish County), from its mouth to a point four hundred feet downstream from the diversion dam at river mile 9.7: June 1 through last day in February season. Trout except Dolly Varden/Bull Trout: Minimum length fourteen inches. Legal to retain Dolly Varden/Bull Trout as part of trout daily limit, minimum length twenty inches. Wild steelhead may be retained December 1 through last day in February.

Sultan River, North and South Forks (Snohomish County): Closed waters.

Summit Lake (Stevens County): Last Saturday in April through October 31 season.

Summit Lake (Thurston County): Last Saturday in April through October 31 season.

Sunday Creek (tributary to N.F. Snoqualmie River) (King County): Closed waters.

Sutherland Lake (Clallam County): Chumming permitted.

Swamp Creek (tributary to Sammamish River) (Snohomish/King counties): Closed waters.

Swan Lake (Ferry County): Last Saturday in April through October 31 season.

Swan's Mill Pond (Stossel Creek) (King County): June 1 through October 31 season.

Swauk Creek (Kittitas County): Selective gear rules.

Swift Reservoir (Skamania County): Last Saturday in April through October 31 season.

Swofford Pond (Lewis County): Fishing from a floating device equipped with an internal combustion motor prohibited. Bass: Daily and possession limit two. Only bass less than twelve inches or over eighteen inches in length may be retained. Channel catfish: Minimum length twenty inches.

Tahuya River (Mason County): All species: Release all fish. From marker one mile above North Shore Bridge upstream: Selective gear rules.

From mouth to Bear Creek-Dewatto Road crossing, additional November 1 through last day in February season.

Taneum Creek (Kittitas County): Selective gear rules.

Tanwax Lake (Pierce County): Bass: Only bass less than twelve inches or over fifteen inches in length may be retained.

Tapps Lake (Reservoir) intake canal (Pierce County), to within four hundred feet of the screen at Dingle Basin: Year around season.

Tarboo Lake (Jefferson County): Last Saturday in April through October 31 season.

Tate Creek (tributary to N.F. Snoqualmie River) (King County): Closed waters.

Taylor River (tributary to the Middle Fork Snoqualmie) (King County): Selective gear rules. All species: Release all fish.

Teal Lake (Jefferson County): Last Saturday in April to October 31 season.

Teanaway River, including North Fork (Kittitas County): Selective gear rules.

Tenas Lake (Mason County): Last Saturday in April through October 31 season.

Tenant Lake (Whatcom County): Fishing from any floating device prohibited from first Friday in October through January 15.

Terrell, Lake (Whatcom County): Fishing from any floating device prohibited the first Saturday after Labor Day through the following Friday and from October 1 through January 15 except fishing from floating dock permitted. Bass: Only bass less than twelve inches or over fifteen inches in length may be retained.

Thomas Lake (Stevens County): Last Saturday in April through October 31 season.

Thornton Creek (tributary to Lake Washington) (King County): Closed waters.

Tibbetts Creek (tributary to Lake Sammamish) (King County): Closed waters.

Tieton River (Yakima County): Lawful to fish to base of Tieton (Rimrock) Dam. Trout: Daily limit five, no minimum length. Whitefish: Additional December 1 through March 31 season. Release all fish except whitefish.

Tieton River, North Fork (Yakima County), upstream from Rimrock Lake: Closed waters: Spillway channel. June 1 through August 15 season.

Tieton River, South Fork (Yakima County): From mouth to bridge on USFS Rd. 1070 (approximately 12.5 miles): Closed waters.

Tiger Lake (Kitsap/Mason counties): Last Saturday in April through October 31 season.

Tilton River (Lewis County), from mouth to West Fork: June 1 through March 31 season. Trout: Daily limit five, no more than one over twelve inches in length.

Tilton River, East, North, South and West Forks (Lewis County): Selective gear rules. Trout: Minimum length twelve inches.

Toad Lake (Whatcom County): Last Saturday in April through October 31 season.

Tokul Creek (King County):

From mouth to the posted cable boundary marker located approximately seven hundred feet upstream of the mouth: December 1 through March 31 season, closed 5:00 p.m. to 7:00 a.m. daily. Trout: Minimum length fourteen inches. Wild steelhead may be retained December 1 through last day in February.

From the posted cable boundary marker located approximately seven hundred feet upstream of the mouth to the railroad trestle: Closed waters.

Tolt River (King County):

From mouth to the USGS trolley cable near the confluence of the North and South Forks: June 1 through last day in February season. June 1 through November 30, selective gear rules. Trout: Minimum length fourteen inches. Wild steelhead may be retained December 1 through last day in February.

From the USGS trolley cable to the mouth of Yellow Creek on the North Fork, and to the dam on the South Fork: Closed waters.

From mouth of Yellow Creek upstream on North Fork: Year-round season. Trout: Selective gear rules and release all trout.

From dam upstream on South Fork: Selective gear rules. Trout: Minimum length ten inches.

Totem Lakes 1 and 2 (Whatcom County): Bass: Only bass less than twelve inches or over fifteen inches in length may be retained. Daily limit may not contain more than three bass over fifteen inches in length.

Touchet River (Columbia/Walla Walla counties):

From mouth to confluence of north and south forks: June 1 through October 31 season. Trout: Daily limit five. Additional season: November 1 through April 15. Barbless hooks required. All species: Release all fish except steelhead and brown trout. From confluence of north and south forks upstream, including Wolf Fork: June 1 through October 31 season. Selective gear rules. Release all steelhead. Tributaries other than Wolf Fork: Closed waters.

Toutle River (Cowlitz County):

From mouth to forks, and North Fork from the mouth to the posted deadline below the fish collection facility: June 1 through November 30 season. All species: Release all fish except steelhead with a missing adipose fin and a healed scar at the fin site. Trout: Minimum length twenty inches.

From the posted deadline below the fish collection facility upstream to the headwaters, including all tributaries, but excepting Castle and Coldwater Lakes: Closed waters.

Toutle River, South Fork (Cowlitz County), mouth to source: Closed waters: All tributaries. June 1 through November 30 season. All species: Release all fish except steelhead with a missing adipose fin and a healed scar at the fin site. Trout: Minimum length twenty inches. Mouth to 4100 Road Bridge: Additional December 1 through March 31 season. Selective gear rules. All species: Release all fish except steelhead with a missing adipose fin and a healed scar at the fin site.

Tradition Lake (King County): Bass: Only bass less than twelve inches or over fifteen inches in length may be retained.

Trapper Lake (Chelan County): Trout: Daily limit two.

Trout Creek (tributary to Wind River) (Skamania County): Closed waters.

Trout Lake (Ferry County): Last Saturday in April through October 31 season.

Trout Lake (tributary to Big White Salmon River) (Klickitat County): June 1 through October 31 season.

Tucannon River (Columbia/Walla Walla counties): Closed waters: All tributaries.

From the Highway 261 Bridge upstream to Turner Road Bridge: Trout: Daily limit five, no more than two of which may be steelhead. Additional November 1 through April 15 season. Barbless hooks required. All species: Release all fish except steelhead and whitefish.

From the Turner Road Bridge upstream to the Cummings Creek Bridge: Selective gear rules June 1 through October 31. Additional season November 1 through April 15. Barbless hooks required. All species: Release all fish except steelhead and whitefish.

From the Cummings Creek Bridge upstream to a sign referencing Deer Lake about 3/4 mile upstream of the Tucannon hatchery: Closed waters.

From a sign referencing Deer Lake to the Panjab Creek Bridge: Selective gear rules.

From the Panjab Creek Bridge upstream: Closed waters.

Tucannon River tributaries (Columbia/Walla Walla counties): Closed waters.

Tunnel Lake (Skamania County): Trout: No more than 2 trout 20 inches in length or greater may be retained.

Twin Lake (Jefferson County): Last Saturday in April through October 31 season.

Twin Lakes (Chelan County) and tributaries and outlet stream to junction with the Napeequa River: Closed waters.

Twisp River (Okanogan County), from mouth to South Fork Twisp River: Selective gear rules. Trout: Minimum length twelve inches, maximum length twenty inches.

Tye River (King County): Foss River to Alpine Falls June 1 through October 31 season: Selective gear rules. Trout: Minimum length fourteen inches. Whitefish: Additional November 1 through last day in February season. Release all fish other than whitefish. From Alpine falls upstream: Trout: Minimum size ten inches.

U Lake (Mason County): Last Saturday in April through October 31 season.

Umtanum Creek (Kittitas County): Selective gear rules.

Uncle John Creek (Mason County): Closed waters.

Union Creek (Yakima County): From mouth upstream to falls (approximately 1/4 mile): Closed waters.

Union River (Mason County):

All species: Release all fish. From lower bridge on the Old Belfair Highway upstream: Selective gear rules.

From mouth to lower bridge on the Old Belfair Highway, additional November 1 through last day in February season.

From watershed boundary to source, including all tributaries: Closed waters.

Upper Wheeler Reservoir (Chelan County): Closed waters.

Valley Creek (Clallam County): Last Saturday in April through October 31 season. Juveniles only.

Vance Creek (Mason County): Trout: Minimum length fourteen inches.

Vance Creek/Elma Ponds (Grays Harbor County): Pond One: Last Saturday in April through October 31 season. Juveniles, holders of a senior license and holders of a department disability license only. Pond Two: Last Saturday in April through October 31 season.

Vancouver Lake and all other waters west of Burlington-Northern Railroad from Columbia River drawbridge near Vancouver downstream to Lewis River (Clark County): Trout: Daily limit two, minimum length twelve inches.

Vanes Lake (Pend Oreille County): Last Saturday in April through October 31 season.

Vic Meyers (Rainbow) Lake (Grant County): Last Saturday in April through September 30 season.

Voight's Creek (Pierce County): From mouth to Highway 162 Bridge: Closed waters.

Waddell Creek (Thurston County): Selective gear rules. Trout: Minimum length twelve inches.

Wagners Lake (Snohomish County): Last Saturday in April through October 31 season.

Waitts Lake (Stevens County): Last Saturday in April through last day in February season.

Walker Lake (King County): Last Saturday in April through October 31 season.

Wallace River (Snohomish County):

From its mouth to the first Burlington-Northern Railroad bridge downstream of the Highway 2 Bridge: June 1 through September 1 season. Closed waters: From the first Burlington-Northern Railroad bridge (below Highway 2) to a point two hundred feet upstream of the water intake of the salmon hatchery. Trout except Dolly Varden/Bull Trout: Minimum length fourteen inches. Legal to retain Dolly Varden/Bull Trout as part of trout daily limit, minimum length twenty inches.

From the mouth to mouth of Olney Creek: Additional November 1 through last day in February season. Fishing from any floating device prohibited. Trout except Dolly Varden/Bull Trout: Minimum length fourteen inches. Legal to retain Dolly Varden/Bull Trout as part of trout daily limit, minimum length twenty inches. Wild steelhead may be retained December 1 through last day in February.

Walla Walla River (Walla Walla County):

From mouth to the Touchet River: Year around season. Trout: Barbless hooks required when fishing for steelhead. Release trout April 1 through May 31.

From the Touchet River upstream to state line: Trout: All tributaries except Mill Creek, maximum length twenty inches. Additional season November 1 through April 15. All

species: Barbless hooks required and release all fish except steelhead.

Walupt Lake (Lewis County): Closed waters: All inlet streams. Last Saturday in April through October 31 season. Selective gear rules except fishing from devices equipped with motors permitted. Trout: Minimum length ten inches.

Wannacut Lake (Okanogan County): Last Saturday in April through October 31 season.

Wapato Lake (Chelan County): Last Saturday in April through October 31 season. From August 1 through October 31: Selective gear rules except fishing from a device equipped with an internal combustion engine permitted. Trout: Release all trout.

Wapato Lake (Pierce County): Juveniles only.

Ward Lake (Ferry County): Last Saturday in April through October 31 season.

Ward Lake (Thurston County): Last Saturday in April through October 31 season.

Warden Lake and Warden Lake, South (Grant County): March 1 through July 31 season.

Washburn Island Pond (Okanogan County): April 1 through September 30 season. Bass: Only bass less than 12 inches or over fifteen inches in length may be retained. Fishing from a floating device equipped with an internal combustion motor prohibited.

Washington, Lake, including that portion of the Sammamish River from the 68th Avenue N.E. Bridge downstream (King County): Fishing from floating device prohibited one hundred yards either side of the floating bridges. Chumming permitted. Trout: December 1 through last day in February: Release all steelhead and rainbow trout over twenty inches in length. March 1 through June 30: Minimum length twelve inches, and release all steelhead and rainbow trout over twenty inches in length. Kokanee/sockeye under fifteen inches are kokanee while those fifteen inches and over are sockeye salmon.

Washington, Lake, Ship Canal (King County) (waters east of a north-south line 400 feet west of the fish ladder at the Chittenden Locks and west of a north-south line at the eastern ends of the concrete abutments east of the Montlake Bridge): West of Fremont Bridge: Fishing from floating device prohibited. East of Fremont Bridge: Chumming permitted.

From west boundary to a north-south line 400 feet east of the eastern end of the northern wing wall of Chittenden Locks: Closed waters.

From 400 feet east of the eastern end of the northern wing wall of Chittenden Locks to the east boundary: Open year around. Trout: December 1 through last day in February daily limit five, no minimum length. Release steelhead and rainbow trout over twenty inches in length. March 1 through June 30, daily limit five, minimum length twelve inches. Release steelhead and rainbow trout over twenty inches in length. July 1 through November 30, daily limit five, no minimum length. Kokanee/sockeye less than fifteen inches in

length are kokanee and fifteen inches and over in length are sockeye salmon.

Washougal River (Clark County):

From mouth to bridge at Salmon Falls: June 1 through March 15 season. Trout: Minimum length twelve inches. Release wild cutthroat. Release steelhead August 16 through October 15.

From mouth to Mt. Norway Bridge: Additional April 16 through May 31 season. All species: Release all fish except steelhead with a missing adipose fin and a healed scar at the fin site.

From bridge at Salmon Falls to its source: Closed waters.

Washougal River, West (North) Fork (Clark/Skamania counties):

From mouth to the water intake at the department hatchery: Closed waters.

From intake at department hatchery to source: June 1 through March 15 season. Trout: Minimum length twelve inches. Release wild cutthroat.

Watson Lake (Columbia County): March 1 through October 31 season. Fishing from any floating device prohibited.

Wenas Lake (Yakima County): Trout: Daily limit five, of which not more than two may be brown trout.

Wenatchee Lake (Chelan County): Chumming permitted. Trout except kokanee: Daily limit two, minimum length twelve inches. Kokanee not counted in daily trout limit. Kokanee daily limit sixteen. Kokanee/sockeye under sixteen inches will be considered kokanee while those sixteen inches and over will be considered sockeye salmon.

Wenatchee River (Chelan County):

From mouth to Lake Wenatchee: June 1 through August 31 season. Selective gear rules. Trout: Minimum length twelve inches, maximum length twenty inches. Whitefish: Additional season December 1 through March 31. Release all fish except whitefish. Selective gear rules.

West Twin River (Clallam County): June 1 through last day in February season. Trout: Minimum length fourteen inches.

Whatcom Creek (Whatcom County):

From mouth to stone bridge at Whatcom Falls Park: June 1 through last day in February season. Trout: Minimum length fourteen inches. Wild steelhead may be retained December 1 through last day in February.

From stone bridge at Whatcom Falls Park upstream to Lake Whatcom: Last Saturday in April through October 31 season. Juveniles only. Trout: No minimum length.

Whatcom, Lake (Whatcom County): Last Saturday in April through October 31 season, except those waters between the Electric Avenue Bridge and the outlet dam are closed waters: Trout: Daily limit may contain no more than one cutthroat trout, minimum cutthroat length eighteen inches.

Whatcom, Lake, tributaries (Whatcom County): Closed waters.

White River (Chelan County), from mouth upstream to White River Falls: Selective gear rules. Trout: Maximum length twenty inches.

White (Stuck) River (Pierce County):

From mouth to R Street Bridge in Auburn: June 1 through September 30: Closed waters. October 1 through last day in February season: Trout: Minimum length fourteen inches.

From R Street Bridge to Highway 410 Bridge at Buckley, except waters of Puget Power canal, including the screen bypass channel, above the screen at Dingle Basin are closed waters: October 1 through October 31 season only. Trout: 14 inch minimum size.

From the Weyerhaeuser 6000 Road Bridge (Bridge Camp) to its source: Whitefish: Additional November 1 through January 31 season. Release all fish except whitefish.

Whitechuck River (Snohomish County): Trout: Legal to retain Dolly Varden/Bull Trout as part of trout daily limit, minimum length twenty inches.

White Salmon River (Klickitat/Skamania counties):

From mouth to powerhouse: Year around season. Trout: Minimum length fourteen inches.

From powerhouse to within four hundred feet of Northwestern Dam: November 16 to June 15 season. Trout: Minimum length fourteen inches.

From gas pipeline crossing above Northwestern Lake to Gilmer Creek: Selective gear rules. Trout: Minimum length twelve inches.

Whitestone Lake (Okanogan County): Bass: Only bass less than twelve inches or over fifteen inches in length may be retained.

Wide Hollow Creek (Yakima County): Trout: Daily limit five, no minimum length.

Widgeon Lake (Grant County): March 1 through March 31 and September 1 through September 30 seasons.

Wildberry Lake (Mason County): Last Saturday in April through October 31 season.

Wildcat Lake (Kitsap County): Last Saturday in April through October 31 season.

Wilderness Lake (King County): Last Saturday in April through October 31 season.

Willame Lake (Lewis County): Last Saturday in April through October 31 season. Selective gear rules. Trout: Daily limit two, minimum length fifteen inches.

Willapa River (Pacific County), including all forks: Closed waters: Four hundred feet below falls on South Fork to falls.

All species: Release all fish except that up to two hatchery steelhead per day may be retained, from mouth to Forks Creek and in South Fork. From department boat launch in South Bend upstream to Forks Creek: Single point barbless hooks required July 1 through October 31 upstream to Forks Creek. Upstream from Forks Creek: Selective gear rules.

From department boat launch in South Bend to Forks Creek: Additional November 1 through March 31 season.

Fishing from any floating device prohibited from the bridge on Willapa Road (Camp One Bridge) to Forks Creek. Single point barbless hooks required November 1 through January 31.

South Fork: Additional November 1 through last day of February season. Selective gear rules.

Williams Creek (Pacific County): June 1 through last day in February season. Selective gear rules. All species: Release all fish.

Williams Lake (Spokane County): Last Saturday in April through September 30 season.

Williams Lake (Stevens County): December 1 through March 31 season.

Willow Lake (Whatcom County): July 1 through October 31 season. Selective gear rules. Trout: Daily and possession limit one, minimum length eighteen inches.

Wilson Creek (two branches within Ellensburg city limits) (Kittitas County): Juveniles only. Trout: Daily limit five, no minimum length.

Winchester Wasteway (Grant County): Within Winchester Game Reserve: February 1 through September 30 season.

Wind River (Skamania County):

Mouth to four hundred feet below Shipherd Falls: June 1 through March 15 season. Trout: Minimum length fourteen inches.

From four hundred feet below to one hundred feet above Shipherd Falls fish ladder: Closed waters.

From one hundred feet above Shipherd Falls to source: June 1 through November 30 except closed from an upper boundary sign along Carson National Fish Hatchery grounds to a lower boundary marker 800 yards downstream June 1 through August 31. All species: Selective gear rules.

Tyee Springs: Closed waters.

From one hundred feet above Shipherd Falls fish ladder to source, including all tributaries: June 1 through November 30 season. Trout: Minimum length fourteen inches.

Winston Creek (tributary to Cowlitz River) (Lewis County): Selective gear rules. Trout: Minimum length ten inches.

Wiser Lake (Whatcom County): Bass: Only bass less than twelve inches or over fifteen inches in length may be retained.

Wishkah River (Grays Harbor County), including all forks: Closed waters: Mainstem from four hundred feet below outlet of dam at Wishkah Rearing Ponds (formerly Mayr Bros.) to dam. Trout: Minimum length twelve inches. Release wild cutthroat.

From the mouth to four hundred feet below outlet: Additional November 1 through March 31 season. Trout: Minimum length twelve inches. Release wild cutthroat.

Wood Lake (Mason County): Last Saturday in April through October 31 season.

Woodland Creek (Thurston County): Trout: Minimum length fourteen inches.

Wooten Lake: Last Saturday in April through October 31 season.

Wynoochee River (Grays Harbor County): Single point barbless hooks required September 16 through October 31 upstream to 7400 line bridge above mouth of Schafer Creek. Trout: Minimum length twelve inches. Release wild cutthroat.

From mouth to 7400 line bridge above mouth of Schafer Creek: Additional November 1 through March 31 season. Trout: Minimum length twelve inches. Release wild cutthroat.

Wynoochee Reservoir (Grays Harbor County): June 1 through October 31 season. Trout: Daily limit two, minimum length twelve inches.

Yakima River (Yakima County): Release all steelhead in mainstem and tributaries.

From mouth to four hundred feet below Roza Dam: Year around season. Trout: Minimum length twelve inches and maximum length twenty inches. Release all trout April 1 through May 31.

From Roza Dam to four hundred feet below Easton Dam: Year around season. Fishing from floating devices equipped with motors allowed only from the U.S. Bureau of Reclamation restricted area signs at Roza Dam upstream to the boat launch ramp on the Roza Access Area (approximately one-half mile). Trout: Selective gear rules, and release all trout. Whitefish: Bait and one single-pointed, barbless hook only may be used for whitefish December 1 through last day in February.

From Lake Easton to Keechelus Dam: Selective gear rules.

Yakima Sportsmen's Park Ponds (Yakima County): Juveniles only.

Yale Reservoir (Cowlitz County): Trout: Kokanee not counted in daily trout limit. Kokanee daily limit sixteen.

Yellowjacket Creek (tributary to Cispus River) (Lewis County): Selective gear rules. Trout: Minimum length twelve inches.

Yellowjacket Ponds (Lewis County): Last Saturday in April through last day in February season. Trout: No more than one over twelve inches in length.

Yokum Lake (Pend Oreille County): Last Saturday in April through October 31 season.

(3) Specific marine water exceptions to state-wide rules:

(a) Marine water area codes and boundaries:

(i) Area 1 (Ilwaco): Waters west of the Buoy 10 Line and north to Leadbetter Point.

(ii) Area 2 (Westport-Ocean Shores): From Leadbetter Point north to the Queets River. Area 2 excludes waters of Willapa Bay and Grays Harbor.

(iii) Area 2-1: Willapa Bay east of a line from Leadbetter Point to Willapa Channel Marker 8 (Buoy 8) then to the westerly most landfall on Cape Shoalwater.

(iv) Area 2-2: Grays Harbor east of a line from the outermost end of the north jetty to the outermost exposed end of the south jetty.

(v) Area 3 (La Push): From the Queets River north to Cape Alava.

(vi) Area 4 (Neah Bay): From Cape Alava north and inside Juan de Fuca Strait to the Sekiu River.

(vii) Area 5 (Sekiu and Pillar Point): From mouth of Sekiu River east to Low Point, mouth of the Lyre River.

(viii) Area 6 (East Juan de Fuca Strait): From Low Point east to the Partridge Point-Point Wilson line north to the line from Trial Island (near Victoria, B.C.) - Vessel Traffic Separation Buoy "R" - Smith Island - the most northeasterly of the Lawson Reef lighted buoys (RB1 QK Fl Bell) - Northwest Island - the Initiative 77 marker on Fidalgo Island.

(ix) Area 7 (San Juan Islands): All marine waters north of the line described under Area 6 to the United States-Canadian boundary.

(x) Area 8 (Deception Pass, Hope and Camano Islands): Line projected from West Point on Whidbey Island to Reservation Head on Fidalgo Island east through Deception Pass, including all waters east of Whidbey Island to the Possession Point - Shipwreck Line.

(xi) Area 8-1 (Deception Pass and Hope Island): East of a line projected from West Point on Whidbey Island to Reservation Head on Fidalgo Island, south of the Burlington Northern Railroad Bridge at the north end of Swinomish Slough, north of the Highway 532 Bridge between Camano Island and the mainland, and westerly of a line from the East Point Light on Whidbey Island to the Saratoga Pass Light # 2 on Camano Island (F1 red 4 sec.).

(xii) Area 8-2 (Port Susan and Port Gardner): East of a line from the East Point Light on Whidbey Island to the Saratoga Pass Light # 2 on Camano Island (F1 red 4 sec.) and north of a line from the south tip of Possession Point 110 degrees true to a shipwreck on the opposite shore.

(xiii) Area 9 (Admiralty Inlet): All waters inside and south of the Partridge Point-Point Wilson Line and a line projected from the southerly tip of Possession Point 110 degrees true to a shipwreck on the opposite shore and northerly of the Hood Canal Bridge and the Apple Cove Point-Edwards Point Line.

(xiv) Area 10 (Seattle-Bremerton): From the Apple Cove Point-Edwards Point Line to a line projected true east-west through the northern tip of Vashon Island.

(xv) Area 11 (Tacoma-Vashon Island): From the northern tip of Vashon Island to the Tacoma Narrows Bridge.

(xvi) Area 12 (Hood Canal): All contiguous waters south of the Hood Canal Bridge and adjacent waters north of the Hood Canal Bridge when fishing from the pontoon beneath the bridge.

(xvii) Area 13 (South Puget Sound): All contiguous waters south of the Tacoma Narrows Bridge.

(b) Marine waters regulations: These regulations apply to all marine waters contained within the boundaries of Washington state, within Puget Sound, Hood Canal, the Strait of Juan de Fuca, the San Juan Islands, the Strait of Georgia, and the Pacific Ocean, including estuaries (river mouths) from salt water upstream to a line between the outermost headlands measured at the highest high tide (usually the

debris line furthest inshore on surrounding beaches), unless otherwise described under area regulations (see individual areas, below):

(i) Fishing hours: Twenty-four hours per day year around, except those waters of Area 10 west of the Lake Washington Ship Canal to a north-south line 175 feet west of the Burlington-Northern Railroad Bridge are closed waters.

(ii) License requirements: A valid current Washington state department of fish and wildlife saltwater license, and, if appropriate, a steelhead license, is required to fish for game fish including steelhead in marine waters. All steelhead taken from marine areas shall be entered on the steelhead catch record card using the words Marine Area and followed by the appropriate marine area code number.

(iii) Gear restrictions: Angling gear only, and in those waters of Area 10 downstream of the First Avenue South Bridge to an east-west line through southwest Hanford Street on Harbor Island and parallel to southwest Spokane Street where it crosses Harbor Island, nonbuoyant lure restriction July 1 through November 30. In all areas, underwater spearfishing, spearing, gaffing, clubbing, netting, or trapping game fish is unlawful.

(iv) All species: Release all fish except up to two hatchery steelhead may be retained per day.

WSR 99-11-101

EXPEDITED ADOPTION

INSURANCE COMMISSIONER'S OFFICE

[Insurance Commissioner Matter R 99-3—Filed May 19, 1999, 11:17 a.m.]

Purpose: Reduce the amount of copies of the annual reports that must be filed with the commissioner.

Other Identifying Information: Insurance Commissioner Matter R-99-3.

Statutory Authority for Adoption: RCW 48.02.060, 48.44.050, 48.46.200.

Statute Being Implemented: RCW 48.05.250.

Summary: Reducing the number of copies of annual statements filed by domestic insurers.

Reasons Supporting Proposal: It should eliminate an unnecessary filing requirement and the associated costs and burdens. Additionally, storage burdens are reduced on the Office of the Insurance Commissioner.

Name of Agency Personnel Responsible for Drafting: Jon Hedegard, Olympia, Washington, (360) 664-4629; Implementation: Chase Davis, Lacey, Washington, (360) 407-0539; and Enforcement: John Woodall, Lacey, Washington, (360) 407-0535.

Name of Proponent: Deborah Senn, Insurance Commissioner, governmental.

Rule is not necessitated by federal law, federal or state court decision.

Explanation of Rule, its Purpose, and Anticipated Effects: Currently, WAC 284-07-050(4) requires domestic insurers to file four copies of their annual statements. The proposed rule would eliminate a copy reducing that number to three. All copies would be sent to the Olympia offices.

This rule will aid in reducing the costs to insurers and lessening the space requirements necessary for record maintenance on the insurance commissioner.

Proposal Changes the Following Existing Rules: The proposal would amend WAC 284-07-050(4) as noted above.

NOTICE

THIS RULE IS BEING PROPOSED TO BE ADOPTED USING AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS RULE BEING ADOPTED USING THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Kacy Brandedberry, Office of the Insurance Commissioner, P.O. Box 40255, Olympia, WA 98504-0255, e-mail Kacyb@oic.wa.gov, fax (360) 664-2782, AND RECEIVED BY July 17, 1999.

May 19, 1999

Robert A. Harkins
Chief Deputy Commissioner

AMENDATORY SECTION (Amending Matter No. R 95-18, filed 8/21/96, effective 9/21/96)

WAC 284-07-050 Annual statement instructions. (1) For the purpose of this section, the following definitions shall apply:

(a) "Insurer" shall have the same meaning as set forth in RCW 48.01.050. It also includes health care service contractors registered under chapter 48.44 RCW and health maintenance organizations registered under chapter 48.46 RCW.

(b) "Insurance" shall have the same meaning as set forth in RCW 48.01.040. It also includes prepayment of health care services as set forth in RCW 48.44.010(3) and prepayment of comprehensive health care services as set forth in RCW 48.46.020(1).

(2) Each authorized insurer is required to file with the commissioner an annual statement for the previous calendar year in the general form and context as promulgated by the National Association of Insurance Commissioners (NAIC) for the kinds of insurance to be reported upon, and shall also file a copy thereof with the NAIC. To effectuate RCW 48.05.250, 48.05.400, 48.44.095 and 48.46.080 and to enhance consistency in the accounting treatment accorded various kinds of insurance transactions, the valuation of assets, and related matters, insurers shall adhere to the appropriate Annual Statement Instructions and the Accounting Practices and Procedures Manuals promulgated by the NAIC.

(3) This section does not relieve an insurer from its obligation to comply with specific requirements of the insurance code or rules thereunder.

(4) Number of statements:

(a) For domestic insurers, the statements are to be filed in ((quadruplicate)) triplicate to assist with public viewing and copying. ((Three)) Two statements must be permanently bound on the left side. The ((fourth)) third statement must be

unbound. ((Two bound)) The statements ((and one unbound statement)) are to be filed in the Olympia office ((and one bound statement is to be filed in the Seattle office)).

(b) For foreign insurers, except for health care service contractors and health maintenance organizations, one statement shall be filed in the Olympia office. For health care service contractors and health maintenance organizations, two left side permanently bound and one unbound statement shall be filed in the Olympia office to assist with public viewing and copying.

(5) Each domestic insurer shall file quarterly reports of its financial condition with the commissioner. Each foreign insurer shall file quarterly reports of its financial condition with the NAIC. The commissioner may require a foreign insurer to file quarterly reports with the commissioner whenever, in the commissioner's discretion, there is a need to more closely monitor the financial activities of the foreign insurer. The reports shall be filed in the commissioner's office not later than the forty-fifth day after the end of the insurer's calendar quarters. Such quarterly reports shall be in the form and content as promulgated by the NAIC for quarterly reporting by insurers, shall be prepared according to appropriate Annual and Quarterly Statement Instructions and the Accounting Practices and Procedures Manuals promulgated by the NAIC and shall be supplemented with additional information required by this title and by the commissioner. The statement is to be completed and filed in the same manner and places as the annual statement. Quarterly reports for the fourth quarter are not required.

(6) As a part of any investigation by the commissioner, the commissioner may require an insurer to file monthly financial reports whenever, in the commissioner's discretion, there is a need to more closely monitor the financial activities of the insurer. Monthly financial statements shall be filed in the commissioner's office no later than the twenty-fifth day of the month following the month for which the financial report is being filed. Such monthly financial reports shall be the internal financial statements of the company. In addition, the commissioner may require these internal financial statements to be accompanied by a schedule converting the financial statements to reflect financial position according to statutory accounting practices and submitted in a form using the same format and designation as the insurer's quarterly financial reports of insurers.

(7) Health care service contractors shall use the Hospital, Medical, Dental Service or Indemnity Corporation's Statement Form promulgated by the NAIC for their statutory filings.

(8) Each health care service contractor's and health maintenance organization's annual statement shall be accompanied by a monthly enrollment data form (IC-16-HC/IC-15-HMO) and additional data statement form (IC-13A-HC/IC-14-HMO).

(9) An insurer who on December 31, 1996, has not previously filed its annual or quarterly statements with the NAIC, shall comply with this rule for the year ending December 31, 1996, and each year thereafter. To enhance the intrastate and interstate surveillance of the insurer's financial condition earlier application is permitted.

(10) The commissioner may allow a reasonable extension of the time within which such financial statements shall be filed.

EXPEDITED ADOPTION

WSR 99-10-027
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Economic Services Administration)
 (WorkFirst Division)
 [Filed April 28, 1999, 3:26 p.m.]

Date of Adoption: April 28, 1999.

Purpose: Shortens and simplifies language to bring it into compliance with Governor Locke's Order 97-02.

Citation of Existing Rules Affected by this Order: Amending WAC 388-310-0300, 388-310-0400, 388-310-0500, 388-310-0600, 388-310-0700, 388-310-0900, 388-310-1000, 388-310-1050, 388-310-1100, 388-310-1200, 388-310-1400, 388-310-1500, 388-310-1600, 388-310-1700, 388-310-1800, and 388-310-1900.

Statutory Authority for Adoption: RCW 74.08.090 and 74.04.050.

Adopted under notice filed as WSR 99-05-071 on February 17, 1999.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 16, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 16, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 16, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

April 28, 1999

Marie Myerchin-Redifer, Manager
 Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 97-20-129, filed 10/1/97, effective 11/1/97)

WAC 388-310-0300 WorkFirst—((Participation))

Exemptions for mandatory participants. (1) ((All TANF and state family assistance (SFA) recipients who are sixteen years of age and older and all custodial parents are required to participate in WorkFirst unless exempted under subsection (2)(a) of this section.))

((2) A person is exempt from WorkFirst participation requirements if:

((a) The person is needed in the home to personally provide care for a child under twelve months of age.

((b) The person may use this exempt status for a total of twelve months during the person's sixty month lifetime limit for assistance.

((3) Persons who are exempt may volunteer to participate and will not be subject to sanction for subsequent refusal to

participate if still eligible for the exemption)) **If I am a mandatory participant, when can I be exempted from participating in WorkFirst activities?**

You can claim an exemption from participating in WorkFirst activities during months that you are needed in the home to personally provide care for a child under twelve months of age. You can only claim this exemption for up to twelve months in your lifetime.

(2) Can I participate in WorkFirst while I am exempt?

You can participate in WorkFirst while you are exempt, and the time you participate does not count against your twelve-month limit. If you decide later to stop participating, and you still qualify for an exemption, you will be put back into exempt status with no financial penalty.

(3) Does an exemption from participation affect my sixty-month time limit for receiving TANF or SFA benefits?

An exemption from participation does not affect your sixty-month time limit for receiving TANF or SFA benefits(described in WAC 388-484-0005). Even if exempt from participation, you will use up one of your sixty months of TANF/SFA benefits.

AMENDATORY SECTION (Amending WSR 98-23-037, filed 11/10/98, effective 12/11/98)

WAC 388-310-0400 WorkFirst—((What are the initial requirements of a WorkFirst participant?)) Entering the WorkFirst program as a mandatory participant. (1) ((WorkFirst requires you to look for a job as your first activity unless you are temporarily deferred from job search. Reasons that you may be temporarily deferred from looking for a job are:

((a) You work twenty or more hours a week; "work" means to engage in any legal, income generating activity which is taxable under the United States Tax Code or which would be taxable with or without a treaty between an Indian Nation and the United States; or

((b) You are under the age of eighteen and have not completed high school or GED; or

((c) You are under the age of twenty, and are attending high school or an equivalent full time; or

((d) Your situation prevents you from looking for a job (see WAC 388-310-1600).))

((2) If and when your job search is temporarily deferred, you must take part in an evaluation of your employability as part of your individual responsibility plan (IRP).))

((3) You must follow instructions from your case manager and/or job service specialist as written in your IRP.))

((4) If you do not participate in job search, or in the activities listed in your IRP during your temporary deferral from job search, and you do not have a good reason, the department will impose a financial penalty, sometimes called a sanction)) **What happens when I enter the WorkFirst program as a mandatory participant?**

If you are a mandatory participant, WorkFirst requires you to look for a job as your first activity unless you are temporarily deferred from job search. You must follow instruc-

tions as written in your individual responsibility plan (see WAC 388-310-0500) while you are in job search.

(2) May I be temporarily deferred from looking for a job?

If you are a mandatory participant, your case manager will ask you if you are exempt or have any reasons why you cannot go to job search. You may be temporarily deferred from looking for a job for any of the following reasons:

(a) You work twenty or more hours a week. "Work" means to engage in any legal, income generating activity which is taxable under the United States Tax Code or which would be taxable with or without a treaty between an Indian Nation and the United States; or

(b) You work sixteen or more hours a week in the federal or state work study program and you attend a Washington state community or technical college at least half-time; or

(c) You are under the age of eighteen, have not completed high school, GED or its equivalent and are in school full-time; or

(d) You are eighteen or nineteen years of age and are attending high school or an equivalent full-time; or

(e) Your situation prevents you from looking for a job. (For example, you may be unable to look for a job while you have health problems, are homeless and/or dealing with family violence.)

(3) What are my requirements if I am temporarily deferred from job search?

If and when your job search is temporarily deferred, you may be required to take part in an evaluation of your employability as part of your individual responsibility plan. Your individual responsibility plan will describe what you need to do to be able to enter job search and then find a job (see WAC 388-310-0500 and 0700).

(4) What happens if I do not follow my WorkFirst requirements?

If you do not participate in job search, or in the activities listed in your individual responsibility plan, and you do not have a good reason, the department will impose a financial penalty (sanction, see WAC 388-310-1600).

AMENDATORY SECTION (Amending WSR 98-23-037, filed 11/10/98, effective 12/11/98)

WAC 388-310-0500 WorkFirst—(What is included in WorkFirst job search?) Individual responsibility plan.

(1) ((Job search is an opportunity to learn and use skills you need to find and keep a job. Job search may include:

(a) Classroom instruction; and/or

(b) Structured job search that helps you find job openings, complete applications, practice interviews and apply other skills and abilities with a job search specialist or a group of fellow job seekers; and/or

(c) Pre-employment training, in which you learn skills you need for an identified entry level job that pays more than average entry level wages. Pre-employment training is an acceptable job search activity when an employer or industry commits to hiring or giving hiring preference to WorkFirst participants who successfully complete pre-employment training.

(2) WorkFirst job search is delivered by the employment security department or a contracted partner.

(3) Period of job search may last up to twelve continuous weeks. Job search specialists will monitor your progress, and by the end of the first four weeks, job search specialists will determine whether or not you should continue in job search. Job search will end when:

(a) You find a job; or

(b) You become exempt from WorkFirst requirements (see WAC 388-310-0300); or

(c) Your situation changes and you are temporarily deferred from continuing with job search (see WAC 388-310-0400); or

(d) Job search specialists have determined that you need additional skills and/or experience to find a job.

(4) At the end of the job search period, you will be referred back to your DSHS case manager for further action))

What is the purpose of my individual responsibility plan?

The purpose of your individual responsibility plan is to give you a written statement that describes:

(a) What your responsibilities are; and

(b) Which WorkFirst activities you are required to participate in; and

(c) What services you will receive so you are able to participate.

(2) What is included in my individual responsibility plan?

Your individual responsibility plan includes the following:

(a) What WorkFirst activities you must be engaged in, a start and end date for each activity and how many hours a week you must spend in each activity.

(b) Any other specific requirements that are tied to the WorkFirst work activity. For example, you might be required to learn English as part of your work experience activity.

(c) What services you need to participate in the activity. For example, you may require support services (such as help with paying for transportation) or help with paying childcare.

(d) Your statement that you recognize the need to become and remain employed as quickly as possible.

(3) How is my individual responsibility plan developed?

You and your case manager will work together to develop your individual responsibility plan and decide what activities will be included in it. Then, your case manager will assign you to specific WorkFirst activities that will help you find employment as quickly as possible.

(4) What happens after my individual responsibility plan is completed?

Once your individual responsibility plan is completed:

(a) You will sign and get a copy of your individual responsibility plan.

(b) You and your case manager will review your plan as necessary over the coming months to make sure your plan continues to meet your employment needs. You will sign and get a copy of your individual responsibility plan every time it is reviewed and changed.

AMENDATORY SECTION (Amending WSR 97-20-129, filed 10/1/97, effective 11/1/97)

WAC 388-310-0600 WorkFirst—((Evaluation of employability)) Job search. (1) ((A participant's employability will be evaluated by the department when:

(a) The person has not obtained paid, unsubsidized employment at the conclusion of job search; or

(b) The person was not referred for immediate job search.

(2) The purpose of the employability evaluation process is to determine:

(a) The reasons why a person is unable to find work in the local labor market; and

(b) Which WorkFirst components, support services, or child care services are needed by the participant to become employed in the shortest time possible.

(3) The evaluation will be focused on factors related to the person's ability to find and retain employment in the local labor market.

(4) Information gathered in the evaluation will be the basis for modifying the participant's individual responsibility plan)) **What is job search?**

Job search is an opportunity to learn and use skills you need to find and keep a job. Job search may include:

(a) Classroom instruction; and/or

(b) Structured job search that helps you find job openings, complete applications, practice interviews and apply other skills and abilities with a job search specialist or a group of fellow job-seekers; and/or

(c) Pre-employment training.

(2) What is pre-employment training?

Pre-employment training helps you learn skills you need for an identified entry level job that pays more than average entry level wages.

(a) Pre-employment training is an acceptable job search activity when an employer or industry commits to hiring or giving hiring preference to WorkFirst participants who successfully complete pre-employment training.

(b) You can find out about current pre-employment training opportunities by asking your job service specialist, your case manager or staff at your local community and technical college.

(3) Who provides me with job search?

Your get job search from the employment security department or another organization under contract with WorkFirst to provide these services.

(4) How long do I stay in job search?

Periods of job search may last up to twelve continuous weeks. Job search specialists will monitor your progress. By the end of the first four weeks, a job search specialist will determine whether you should continue in job search. Job search will end when:

(a) You find a job; or

(b) You become exempt from WorkFirst requirements (see WAC 388-310-0300); or

(c) Your situation changes and you are temporarily deferred from continuing with job search (see WAC 388-310-0400); or

(d) Job search specialists have determined that you need additional skills and/or experience to find a job; or

(e) You have not found a job at the end of the job search period.

(5) What happens at the end of job search if I have not found a job?

At the end of each job search period, you will be referred back to your case manager for an employability evaluation if you have not found a job. You and your case manager will also modify your individual responsibility plan.

AMENDATORY SECTION (Amending WSR 97-20-129, filed 10/1/97, effective 11/1/97)

WAC 388-310-0700 WorkFirst—((Individual responsibility plan)) Employability evaluation. (1) ((The purpose of the individual responsibility plan is to set forth:

(a) The participant's responsibility to participate in the WorkFirst components as required;

(b) The services the department will provide to the person to enable the person to participate;

(2) The department and the participant will work together in the development and decision-making process for component assignment. If needed, the department may assign the component which will provide the person with the job search, work experience, job skills, substance abuse assessment and treatment, family counseling, or family violence counseling or housing search, acquisition, and stabilization assistance as necessary to be employed in the shortest possible time.

(3) The plan includes the following:

(a) The WorkFirst component, in which participation is required, for what period of time and for how many hours a week;

(b) Any specific requirements relating to participation in the component;

(c) The services the department has determined are necessary for the person to participate in the component which may include provision of direct component cost funding, support services and child care subsidies.

(d) The participant's acknowledgment of their obligations to become and remain employed as quickly as possible.

(4) The department will review the elements in a participant's individual responsibility plan as necessary to ensure the plan continues to meet the person's employability needs.

(5) The participant will sign and receive a copy of their individual responsibility plan at the time the plan is developed and whenever the plan is modified)) **Why do I receive an employability evaluation?**

You receive an employability evaluation from your case manager to determine:

(a) Why you are unable to look for work (if you are temporarily deferred from job search) or why you have been unable to find work in your local labor market; and

(b) Which WorkFirst activities you need to become employed in the shortest time possible.

(2) What is the employability evaluation and when will it be used?

(a) The employability evaluation is a series of questions and answers used to determine your ability to find and keep a job in your local labor market.

(b) You and your case manager and/or social worker will use the information from this evaluation to create or modify your individual responsibility plan, adding activities that will help you become employable.

(c) Your case manager will evaluate your ability to find employment when you are a mandatory WorkFirst participant and have:

(i) Gone through a period of job search without finding a job;

(ii) Been referred back early from job search; or

(iii) Been temporarily deferred from job search.

AMENDATORY SECTION (Amending WSR 97-20-129, filed 10/1/97, effective 11/1/97)

WAC 388-310-0900 WorkFirst—Basic education. (1) **What is basic education?**

Basic education is high school completion ((and)), classes to prepare for GED and testing to acquire GED certification. It may include families that work, workplace basics, adult basic education (ABE) or English as a second language (ESL) training if:

(a) ((The ABE or ESL is needed by the person to meet the current standards of the local labor market; and

(b) The activity is combined with paid or unpaid employment or job search.

(2) The department may require a nonexempt custodial parent eighteen and nineteen years of age who lacks a high school diploma or GED certification to participate in basic education if such education is needed by the person to meet the current standards of the local labor market.

(3) Nonexempt participants twenty years of age and older may participate in basic education activities but must also participate in paid or unpaid employment or job search for a minimum of twenty hours a week in addition to the basic education.

(4) The department may require sixteen and seventeen year old TANF and SFA recipients to be in high school or GED certification programs)) It is determined you need this education to become employed or get a better job; and

(b) This activity is combined with paid or unpaid employment or job search.

(2) When do I participate in basic education as part of WorkFirst?

Your may participate in basic education as part of WorkFirst under any of the following circumstances:

(a) You may choose to participate, if you are twenty years of age or older and are working in paid or unpaid employment or in job search for a minimum of twenty hours a week (in addition to the basic education).

(b) You may be required to participate if you are a mandatory participant, a parent eighteen or nineteen years of age, you do not have a high school diploma or GED certificate and you need this education in order to find employment.

(c) You will be required to be in high school or a GED certification program if you are a mandatory participant, six-

teen or seventeen years old and you do not have a high school diploma or GED certificate.

AMENDATORY SECTION (Amending WSR 98-23-037, filed 11/10/98, effective 12/11/98)

WAC 388-310-1000 WorkFirst—((What are the requirements for)) Vocational education ((in WorkFirst?)) (1) **What is vocational education?**

Vocational education is training ((leading)) that leads to a degree or certificate in a specific occupation((;)) and is offered by an accredited:

(a) Public and private technical college((s and)) or school((s,);)

(b) Community college((s, and)) or

(c) Tribal college((s)).

(2) ((WorkFirst)) When can vocational education be included in my individual responsibility plan?

We may ((include)) add vocational education ((in)) to your ((IRP)) individual responsibility plan if:

(a) You are working twenty or more hours a week; or

(b) You lack job skills that are in demand for entry level jobs in your area; and

(c) The vocational education program is the only way that you can ((provide)) acquire the job skills ((that)) you need to qualify for entry level jobs in your area((; and

(d) You could not learn the job skills that you need to qualify for entry level jobs in your area by participating in work experience or on-the-job training that is available to you)) (because there is no available work experience, pre-employment training or on-the-job training that can teach you these skills).

(3) ((When vocational education is included in your IRP, WorkFirst will provide assistance with your costs, if you need assistance and it is not available from other sources. Child care subsidy is available.)) Can I get help with paying the costs of vocational education?

WorkFirst will pay for the costs of your vocational education, such as tuition or books, if vocational education is in your individual responsibility plan and there is no other way to pay them. You can also get help with paying your child care costs through the working connections child care program. (See chapter 388-290 WAC for the working connections child care program rules.)

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 98-23-037, filed 11/10/98, effective 12/11/98)

WAC 388-310-1050 WorkFirst—((What are the requirements for)) Job skills training ((in WorkFirst?)) (1) **What is job skills training?**

Job skills training is training in specific skills directly related to employment, ((offered through community-based organizations, businesses, tribal governments, public and private community and technical colleges)) but not tied to a specific occupation. Job skills training programs differ ((as to length, content, and sponsor)) in how long the course lasts,

what skills are taught and who provides the training. The training may be offered by:

- (a) Community based organizations;
- (b) Businesses;
- (c) Tribal governments; or
- (d) Public and private community and technical colleges.

(2) ((WorkFirst)) When can job skills training be included in my individual responsibility plan?

We may ((include)) add job skills training in your ((IRP)) individual responsibility plan for the same reasons we would add vocational education. That is if:

- (a) You are working twenty or more hours a week; or
- (b) You lack job skills that are in demand for entry level jobs in your area; and
- (c) The job skills training program is the only way you can ((provide)) acquire the job skills ((that)) you need to qualify for entry level jobs in your area((; and

(d) You could not learn the job skills that you need to qualify for entry level jobs in your area by participating in work experience or on-the-job training that is available to you)) (because there is no available work experience, pre-employment training, or on-the-job training that can teach you these skills).

(3) ((When job skills training is included in your IRP, WorkFirst will provide assistance with your costs, such as transportation and books, if you need assistance and it is not available from other sources. Child care subsidy is available)) Can I get help with paying the costs of job skills training?

WorkFirst will pay your costs, such as tuition or books, if job skills training is in your individual responsibility plan and there is no other way to pay them. You can also get help with paying your child care costs through the working connections child care program. (See chapter 388-290 WAC for the working connections child care program rules.)

AMENDATORY SECTION (Amending WSR 97-20-129, filed 10/1/97, effective 11/1/97)

WAC 388-310-1100 WorkFirst—Work experience.

(1) What is work experience?

Work experience (sometimes called WEX) is ((unpaid work with a private nonprofit organization, federal, state, local or tribal government or district. Entities providing WEX unpaid employment positions to WorkFirst participants must be in compliance with all applicable state and federal health and safety standards.

(2) The purpose of WEX is to provide the participant with instruction in essential work practices and to practice or expand work skills.

(3) Participant may be required to conduct a self-directed job search.

(4) Participants must accept offered paid employment while participating in WEX.

(5) A person's assignment to a specific WEX activity in excess of six months requires a department review. The review will determine if the person requires more time to gain the skills and abilities established as the desired outcome of the WEX assignment)) an activity for mandatory participants that will teach you the basics of holding down a job and give

you a chance to practice or expand your work skills. Work experience teaches you these skills by assigning you to unpaid work with:

- (a) A private, nonprofit organization;
- (b) A community or technical college; or
- (c) A federal, state, local or tribal government or district.

(2) What happens when I am enrolled in a work experience activity?

When you are enrolled in a work experience activity:

(a) The organization, government or district that is supervising your work experience position must comply with all applicable state and federal health and safety standards while you are working there.

(b) You may be required to look for work on your own and must accept any paid employment you find that meets the criteria in WAC 388-310-1500.

(3) How long does a work experience assignment last?

Your case manager must review your work experience assignment if it lasts longer than six months. This review will determine whether you need more time to learn the skills and abilities that the work experience assignment was set up to teach you.

AMENDATORY SECTION (Amending WSR 97-20-129, filed 10/1/97, effective 11/1/97)

WAC 388-310-1200 WorkFirst—On-the-job training.

(1) What is on-the-job training?

On-the-job training (sometimes called OJT) is skills training provided by an employer at the ((employer's)) their place of business. ((It may include some classroom training release time.

(2) A participant may be eligible for OJT employment if:

- (a) The person lacks skills which are in demand in the local labor market; and
- (b) There are employers in the area able to provide the training.

(3) An employer providing OJT may be reimbursed for up to fifty percent of the total gross wages for regular hours of work and pre-approved release time for training)) You are paid to both work and spend some time learning new skills to help you do your job better. You may receive the training at your job site or be sent to a classroom (using "release time" from your job) to get some of this training.

(2) When do I qualify for on-the-job training?

You may qualify for on-the-job employment if:

- (a) You lack skills which are in demand in the local labor market; and

(b) There are employers in your area who can and will provide the training.

(3) Is my employer reimbursed for giving me on-the-job training?

Your employer may be reimbursed for giving you on-the-job training for up to fifty percent of your total gross wages for regular hours of work and pre-approved release time for training.

AMENDATORY SECTION (Amending WSR 97-20-129, filed 10/1/97, effective 11/1/97)

WAC 388-310-1400 WorkFirst—Community service ((program)). (1) ((Community service is:

(a) Unpaid work performed for a charitable nonprofit organization, federal, state, local, or tribal government or district such as the work performed by volunteer workers; or

(b) An activity approved by the department which benefits the person, the person's family, or the person's community or tribe. These activities may include traditional activities that perpetuate tribal culture and customs.

(2) Activities which may be approved by the department under subsection (1)(b) of this section as part of the individual responsibility plan include:

(a) Caring for a disabled family member;

(b) Nonparental caretaker relative over age fifty caring for a child;

(c) Provision of child care for a WorkFirst participant by a WorkFirst participant;

(d) Active participation in a drug or alcohol assessment or treatment program certified or contracted through chapter 70.96A RCW;

(e) Specialized services as required by the participant to become employable or retain employment such as family violence counseling or active participation in a drug or alcohol assessment or treatment program certified or contracted through chapter 70.96A RCW)) **What is community service?**

Community service includes two types of activities for mandatory participants:

(a) Unpaid work (such as the work performed by volunteer workers) that you perform for a charitable nonprofit organization, federal, state, local or tribal government or district; or

(b) An activity approved by your case manager which benefits you, your family, your community or your tribe. These activities may include traditional activities that perpetuate tribal culture and customs.

(2) What type of community services activities benefit me, my family, my community or my tribe and might be included in my individual responsibility plan?

The following types of community service activities benefit you, your family, your community or your tribe and might be included in your individual responsibility plan:

(a) Caring for a disabled family member;

(b) Caring for a child, if you are over fifty-five years old and receiving TANF or SFA assistance for the child as a relative (instead of as the child's parent);

(c) Providing childcare for another WorkFirst participant who is doing community service;

(d) Actively participating in a drug or alcohol assessment or treatment program which is certified or contracted by the state under chapter 70.96A RCW; and/or

(e) Participating in family violence counseling or drug or alcohol treatment that will help you become employable or keep your job (this is called "specialized services" in state law).

AMENDATORY SECTION (Amending WSR 97-20-129, filed 10/1/97, effective 11/1/97)

WAC 388-310-1500 WorkFirst—Employment conditions. (1) ((Participants will not be required to accept paid or unpaid employment or engage in an activity in which an employer-employee relationship exists which:

(a) Is not covered by industrial insurance under Title 51 RCW, unless the employee is employed by a tribal government or a tribal private, for-profit business;

(b) Is available because of a labor dispute;

(c) Has working hours or other conditions which interfere with the participant's bona fide religious beliefs or observations;

(d) Involves conditions which are in violation of federal, state or tribal health and safety standards;

(e) Has unreasonable work demands or conditions, such as working without getting paid on schedule with regard to paid work; or

(f) Participants will not be required to participate in unpaid work components for more hours than would equal the family's TANF/SFA grant divided by state or federal minimum wage, whichever is higher. For two parent families in which both parents are nonexempt, the combined hours of required participation in unpaid work may not exceed the family's TANF/SFA grant divided by the higher of the state or federal minimum wage.

(2) Participants will not be required to accept paid employment when the conditions of employment or the employer:

(a) Pays less than the federal, state, or tribe minimum wage, whichever is higher;

(b) Does not provide unemployment compensation coverage under Title 50 RCW, unless the employee is employed by a tribal government, tribal private for-profit business or the employee is exempt under section 7873 of the Internal Revenue Code because the person is a treaty fishing rights related worker;

(c) Requires the person to resign from or refrain from joining a legitimate labor organization; or

(d) Does not provide benefits to participants equal to those provided to other similarly employed workers.

(3) Nothing contained herein shall be in violation of federal or tribal employment laws)) **If I am a mandatory participant, are there any limitations on the type of paid or unpaid employment I must accept?**

If you are a mandatory participant, you must accept paid or unpaid employment (including any activity in which an employer-employee relationship exists) unless the employment:

(a) Is not covered by industrial insurance (described in state law under Title 51 RCW) unless you are employed by a tribal government or a tribal private for-profit business;

(b) Is available because of a labor dispute;

(c) Has working hours or conditions that interfere with your religious beliefs or practices (and a reasonable accommodation cannot be made);

(d) Does not meet federal, state or tribal health and safety standards; or

(e) Has unreasonable work demands or conditions, such as working for an employer who does not pay you on schedule.

(2) Are there any additional limitations on when I can be required to accept paid employment?

You must accept paid employment unless the job or the employer:

(a) Pays less than the federal, state, or tribe minimum wage, whichever is higher;

(b) Does not provide unemployment compensation coverage (described in state law under Title 50 RCW) unless you:

(i) Work for a tribal government or tribal for-profit business; or

(ii) Are a treaty fishing rights related worker (and exempt under section 7873 of the internal revenue code);

(c) Requires you to resign or refrain from joining a legitimate labor organization; or

(d) Does not provide you benefits that are equal to those provided to other workers employed in similar jobs.

(3) How many hours of unpaid employment can I be required to perform?

You can be required to work a set number of hours of unpaid employment each month. The number of hours required will not be more than your TANF, SFA or GA-S cash grant divided by the state or federal minimum wage, whichever is higher.

(4) What safeguards are in place to make sure I am not used to displace currently employed workers?

The following safeguards are in place to make sure you are not used to displace currently employed workers:

(a) You cannot be required to accept paid or unpaid employment which:

(i) Results in another employee's job loss, reduced wages, reduced hours of employment or overtime or lost employment benefits;

(ii) Impairs existing contracts for services or collective bargaining agreements;

(iii) Puts you in a job or assignment, or uses you to fill a vacancy, when:

(A) Any other person is on lay off from the same (or very similar) job within the same organizational unit; or

(B) An employer ends the job of a regular employee (or otherwise reduces its workforce) so you can be hired.

(iv) Reduces current employees' opportunities for promotions.

(b) If a regular employee believes your subsidized or unpaid work activity (such as a community jobs or work experience position) violates any of the rules described above, this employee (or his or her representative) has the right to:

(i) A grievance procedure (described in WAC 388-200-1100); and

(ii) A fair hearing (described in chapter 388-08 WAC).

(5) What other rules apply specifically to subsidized or on-the-job training positions?

If you are in a subsidized or on-the-job training position:

(a) WorkFirst state agencies must stop paying your wage or on-the-job training subsidy to your employer if your

employer's worksite or operation becomes involved in a strike, lockout or bona fide labor dispute.

(b) If your wage subsidy or on-the-job training agreement is ended (and we stop paying any subsidies to your employer) because you were used to displace another employee, it will be up to you and the employer to decide whether you can (or want to) keep working there.

AMENDATORY SECTION (Amending WSR 98-23-037, filed 11/10/98, effective 12/11/98)

WAC 388-310-1600 WorkFirst—(What are the WorkFirst participation requirements and what happens when a person does not participate?) Sanctions. (1) (To participate means that you give the department information requested from you, come to appointments made for you by the department and its agents, do all of the activities listed on your IRP and accept any bona fide offer of employment that you receive.

(2) If you do not participate, WorkFirst will ask you to explain why. The department will determine that:

(a) You had an adequate reason that you were not able to participate; or

(b) You did not have an adequate reason and that you refused to participate.

If the department is not able to contact you, the department will make this decision with the information already on hand.

(3) You have an adequate reason not to participate when you can show that an event outside of your control made you unable to participate. Such events include, but are not limited to:

(a) You, your child(ren), or other family member was ill;

(b) Support services (such as transportation) broke down and you could not make new arrangements right away;

(c) You could not locate care for your child(ren) under thirteen years that is affordable, appropriate, and within a reasonable distance;

"Affordable" means at or below your share of child care costs calculated by the working connections child care program.

"Appropriate" means licensed, certified or approved under state laws and regulations that apply to the type of child care you use, and that you may make your own choice among the child care options that are available in your area.

"Within a reasonable distance" means that you can reach the child care site without travel that exceeds normal expectations in your community.

(d) You could not locate other care services for an incapacitated individual living with you and your dependent child(ren);

(e) You have or had a physical, mental, or emotional condition, determined by a licensed health care professional, that interferes or interfered with your ability to participate;

(f) A significant person in your life died;

(g) You were threatened with or subjected to family violence;

(h) You had received an eviction notice or had another immediate legal problem;

(i) You did not receive notice of a request for information, an appointment or a requirement on your IRP.

(4) If you have an adequate reason that you did not participate, the department will revise your IRP to take your circumstances into account.

(5) If you do not have an adequate reason that you did not participate, the department will find that you refused to participate. The department will notify you that you will be sanctioned starting the next calendar month (see WAC 388-310-1700), unless you start to participate as required. The notice will include information on how to request a fair hearing if you disagree with the department's decision that you refused to participate) **What is a sanction and when is it used?**

A sanction is a penalty that alters your grant when you refuse to:

(a) Give the department the information we need to develop your individual responsibility plan;

(b) Come to scheduled appointments with people who provide WorkFirst services or activities;

(c) Do all of the activities listed on your individual responsibility plan; or

(d) Accept paid employment that meets the criteria in WAC 388-310-1500.

(2) **What happens once I do not provide information, go to an appointment, follow my individual responsibility plan or accept a job?**

If you do not provide information, go to an appointment, follow up on your individual responsibility plan or accept a job, your case manager or social worker will send you a notice to set up an appointment so they can talk to you about the situation. If they are unable to contact you, they will use the information already on hand to find out why you did not follow through with the required activity. Then, your case manager will decide whether:

(a) You were unable to do what was required; or

(b) You were able, but refused, to do what was required.

(3) **What is considered a good reason for not being able to do what WorkFirst requires?**

You have a good reason if it was not possible to follow through on a required activity due to an event outside of your control. Some examples of good reasons may include:

(a) You, your children or other family members were ill;

(b) Your transportation or child care arrangements broke down and you could not make new arrangements in time to comply;

(c) You could not locate child care, for your children under thirteen years, that was:

(i) Affordable (did not cost you more than your co-payment would under the working connections child care program in WAC 388-290);

(ii) Appropriate (licensed, certified or approved under federal, state or tribal law and regulations for the type of care you use and you were able to choose, within locally available options, who would provide it); and

(iii) Within a reasonable distance (within reach without traveling farther than is normally expected in your community).

(d) You could not locate other care services for an incapacitated person who lives with you and your children;

(e) You had a physical, mental or emotional condition, confirmed by a licensed health care professional, that interfered with your ability to participate;

(f) A significant person in your life died;

(g) You were threatened with or subjected to family violence;

(h) You had an immediate legal problem, such as an eviction notice; or

(i) You did not get notice telling you about our information request, an appointment or a requirement on your individual responsibility plan.

(4) **What if my case manager decides that I refused to meet WorkFirst requirements without good reason?**

If your case manager decides you refused to meet WorkFirst requirements without good reason, they will send you a notice that tells you:

(a) What you refused to do;

(b) You will be sanctioned (a penalty will be applied to your grant);

(c) When the sanction starts;

(d) How to request a fair hearing if you disagree with this decision; and

(e) How to end the sanction.

(5) **What are the penalties to my grant?**

The following penalties are applied to your grant for anyone who is sanctioned in your household:

(a) In the first month, we calculate your family's grant and then remove the noncompliant person(s) share of the grant.

(b) In the second month, your reduced grant will be sent to a protective payee every month until the sanction is lifted. (WAC 388-460-0001 describes the protective payee rules.)

(c) In the third and following months, your grant is reduced by the person(s) share or forty percent, whichever is more.

(6) **How do I stop (or end) the sanction?**

To end your sanction:

(a) You must provide the information we requested to develop your individual responsibility plan; and/or

(b) Start and continue to do your required WorkFirst activities.

(c) Your grant will be restored after two weeks of participation, beginning with the day you began doing your required activities.

(7) **What happens if I get sanctioned again after my sanction has been stopped?**

If you are sanctioned again, the sanction process will start again.

(8) **What if I reapply for TANF, SFA or GA-S and I was in sanction when my case closed?**

You are still sanctioned at the level which was in effect when your case closed until you cure your sanction.

AMENDATORY SECTION (Amending WSR 97-20-129, filed 10/1/97, effective 11/1/97)

WAC 388-310-1700 WorkFirst—((Sanctions)) Self-employment. (1) (Refusal to participate will result in sanction.)

(2) Sanction for refusing to participate will affect the family's TANF/SFA grant as follows:

(a) For the first month a person is sanctioned the family's TANF/SFA grant amount (less any income deductions) will be reduced by the participant's share.

(b) For second and subsequent months of continuous sanction status a protective payee will be established for reduced grant amount established under subsection (2)(a) of this section.

(c) For the third and subsequent months of continuous sanctions status the family's grant (less any income deductions) will be reduced by the amount established under subsection (2)(a) of this section or by forty percent whichever is higher. The protective payee will continue.

(3) The department will restore the full TANF/SFA grant amount retroactive to the day the participant begins or resumes participation in the component specified on the person's individual responsibility plan when the person meets participation requirements for the component for a minimum of two weeks) **What is self-employment?**

When you work for yourself and do not have an employer, you are self-employed.

(2) When can I be deferred from job search to pursue self-employment?

(a) To be deferred from job search for self-employment, you must meet all the conditions below:

(i) You must be working at least twenty hours a week at your business;

(ii) Your business must generate income for you that is equal to the minimum wage (state or federal, whichever is higher) times twenty hours per week after your business expenses are subtracted.

(iii) Your case manager will refer you to a local business resource center, and they must approve your self-employment plan;

(b) If you do not meet all these conditions, you can still be self-employed, but you will also need to participate in job search or other WorkFirst activities.

(3) What self-employment services can I get?

If you are a mandatory participant and have an approved self-employment plan in your individual responsibility plan, you may get the following self-employment services:

(a) A referral to community resources for technical assistance with your business plan.

(b) Small business training courses through local community organizations or technical and community colleges.

(c) Information on affordable credit, business training and ongoing technical support.

(4) What support services may I receive?

If you have an approved self-employment plan in your individual responsibility plan all support services are available.

(5) Can I get childcare?

Childcare is available if you have an approved self-employment plan in your individual responsibility plan. (See chapter 388-290 WAC for working connections child care rules.)

AMENDATORY SECTION (Amending WSR 97-20-129, filed 10/1/97, effective 11/1/97)

WAC 388-310-1800 WorkFirst—((Displacement of regular employees)) Post employment services. (1) ((A person is not required to participate in subsidized employment or unpaid work activities which:

(a) Result in the displacement of any currently employed worker including partial displacement, such as reduction in hours of overtime or nonovertime work, reduction in wages, or employment benefits;

(b) Impair existing contracts for services or collective bargaining agreements;

(c) Result in the employment or assignment of a participant or the filling of a position when:

(i) Any other person is on layoff from the same or a substantially equivalent job within the same organizational unit; or

(ii) An employer has created a vacancy for the purpose of hiring a WorkFirst participant by terminating any regular employee or otherwise reduced its workforce.

(d) Infringe on promotional opportunities of any currently employed person.

(2) The department will terminate wage subsidy program or OJT payments to an employer if the employer's worksite or operation becomes involved in a strike, lockout, or bona fide labor dispute.

(3) When a wage subsidy program or OJT agreement has been terminated and payment to the employer discontinued due to displacement of a regular employee, the WorkFirst participant's continued employment with that employer is at the sole discretion of the person and the employer.

(4) A regular employee (or the employee's representative) of an employer which has hired a WorkFirst participant into a subsidized or unpaid work activity who believes the participant's work activity violates any of the provisions under this section has the right to:

(a) A grievance procedure under WAC 388-200-1100; and

(b) A fair hearing under chapter 388-08 WAC) **What is the purpose of post employment services?**

Post employment services help low-income parents who are working twenty hours or more a week keep and cope with their current jobs, look for better jobs, gain work skills for a career and become self sufficient.

(2) How do I obtain post employment services?

(a) You can obtain post employment services by:

(i) Asking for a referral from the local community service office;

(ii) Contacting community or technical colleges; or

(iii) Contacting the employment security department. Employment security department staff may also telephone you if you got a job while you were on TANF or SFA to see if you are interested in receiving these services.

(b) You may qualify for different services (from various state or federal programs) depending on whether you:

(i) Are a mandatory participant (that is, you currently receive TANF, SFA or GA-S benefits);

(ii) Used to receive TANF or SFA benefits; or

(iii) Have never been on TANF or SFA.

(3) Who provides post employment services and what kind of services do they provide?

(a) Your WorkFirst case manager can refer you to employment retention services, that will help you develop the skills you need to keep your job. An employment retention specialist will contact you on a regular basis to:

(i) Help you resolve problems with your employer;

(ii) Help you adjust to your workplace;

(iii) Provide job coaching; and/or

(iv) Provide mentoring.

(b) The employment security department can help you increase your wages, increase your job skills or find a better job by providing you with:

(i) Employment and career counseling;

(ii) Labor market information;

(iii) Job leads for a better job (sometimes called job development);

(iv) On the job training;

(v) Help with finding a job that matches your interests, abilities and skills (sometimes called job matching); and

(vi) Help with finding a new job after job loss (sometimes called reemployment).

(c) Any Washington state technical and community college can approve a skill-training program for you that will help you advance up the career ladder. Their staff will talk to you, help you decide what training would work best for you and then help you get enrolled in these programs. The college may approve the following types of training for you at any certified institution:

(i) High School/GED;

(ii) Vocational education training;

(iii) Job Skills Training;

(iv) Adult Basic Education;

(v) English-as-a-Second Language training; or

(vi) Pre-employment training.

(4) What other services are available while you receive post employment services?

While you receive post employment services, you may qualify for:

(a) Working connections childcare if you meet the criteria for this program (described in chapter 388-290 WAC). To qualify, you must also be in an approved post-employment service and your family's income cannot exceed one hundred seventy-five percent of the federal poverty level.

(b) Other support services, such as help in paying for transportation or work expenses.

(c) Other types of assistance for low-income families such as food stamps, medical assistance or help with getting child support that is due to you and your children.

(5) Who is eligible for post employment service, support services and childcare?

You may qualify for post-employment services, support services and child care if you are working twenty hours or more a week, and:

(a) You are current TANF or SFA recipient. You qualify for:

(i) All types of post employment services, unless you are in sanction status;

(ii) Tuition assistance from the community and technical college system;

(iii) WorkFirst support services; and

(iv) Working connections childcare.

(b) You are a former TANF or SFA recipient. You qualify for:

(i) Employment retention services (help with keeping a job) for up to twelve months following TANF or SFA.

(ii) Wage and skill progression services (help with finding a better job) for up to twenty four months after exiting TANF or SFA.

(iii) Tuition assistance or pre-employment training from the community and technical college system;

(iv) Working connections childcare assistance; and/or

(v) WorkFirst support services for up to twelve months after exiting TANF or SFA.

(c) You are a low wage earner (that is, your family income does not exceed one hundred seventy-five percent of the federal poverty level) who has never received TANF or SFA benefits, and are in a community or technical college-approved skill training program. You may qualify for:

(i) Tuition assistance or pre-employment training from the community and technical college system; or

(ii) Working connections child care while you are in training or school for up to a total of thirty six months.

(6) What if I lose my job while I am receiving post employment services?

If you now receive or used to receive TANF or SFA, help is available to you for up to four weeks so that you can find another job and continue in your approved post employment.

(a) The employment security department will provide you with re-employment services.

(b) At the same time, your case manager can approve up to four weeks of support services and childcare for you.

AMENDATORY SECTION (Amending WSR 97-20-129, filed 10/1/97, effective 11/1/97)

WAC 388-310-1900 WorkFirst—Services for American Indian tribal members and other American Indians.

(1) ((The department will refer American Indian TANF applicants and recipients to the person's tribe, according to populations and service area(s) specified by a tribal government for comparable WorkFirst services when:

(a) The tribal government operates a federally approved Tribal TANF program; and

(b) The person is included in the population and service area identified by the tribal government in the plan)) When might I be referred to a tribal government?

Your case manager may refer you to a tribal government when you are an American Indian who applies for or receives TANF assistance, and:

(a) You are in the population and service area identified in a tribal government's federally-approved tribal TANF program; or

(b) The tribal government does not operate its own TANF program, but it works with the local community service office to provide WorkFirst services and activities to meet your needs.

(2) ((All other American Indian TANF recipients have equitable access to)) **What if I am an American Indian and am not referred to a tribal TANF program or tribal government to receive services?**

WorkFirst ((program components and services under this chapter)) state agencies and their community partners must give you equitable access to all WorkFirst activities and services.

WSR 99-11-003

PERMANENT RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 99-43—Filed May 6, 1999, 3:21 p.m.]

Date of Adoption: April 3, 1999.

Purpose: Repeal cooperative wildlife projects in wildlife code.

Citation of Existing Rules Affected by this Order: Repealing chapter 232-32 WAC, Cooperative wildlife projects; WAC 232-32-010, 232-32-020, 232-32-030, 232-32-040, 232-32-050, 232-32-060, and 232-32-070.

Statutory Authority for Adoption: RCW 77.12.040.

Adopted under notice filed as WSR 99-05-076 on February 17, 1999.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 7.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

May 5, 1999

Debbie Nelson
for Kelly White, Chairman
Fish and Wildlife Commission

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 232-32-010
WAC 232-32-020
WAC 232-32-030
WAC 232-32-040
WAC 232-32-050
WAC 232-32-060
WAC 232-32-070

WSR 99-11-004

PERMANENT RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 99-44—Filed May 6, 1999, 3:25 p.m.]

Date of Adoption: April 3, 1999.

Purpose: To consolidate the former Departments of Fisheries and Wildlife volunteer cooperative program WACs into a single rule, and to establish deadlines for submission of applications.

Citation of Existing Rules Affected by this Order: Amending WAC 220-130-010, 220-130-020, 220-130-030, 220-130-040, 220-130-050, 220-130-060, and 220-130-070.

Statutory Authority for Adoption: RCW 75.08.080, 75.52.050.

Adopted under notice filed as WSR 99-05-075 on February 17, 1999.

Changes Other than Editing from Proposed to Adopted Version: An additional category of cooperative projects was added in WAC 220-130-050, "(g) Cooperative shellfish projects."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 7, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

May 5, 1999

Debbie Nelson
for Kelly White, Chairman
Fish and Wildlife Commission

Chapter 220-130 WAC

VOLUNTEER COOPERATIVE ((FISHERIES)) FISH AND WILDLIFE ENHANCEMENT PROGRAM((S))AMENDATORY SECTION (Amending Order 89-02, filed 1/6/89)

WAC 220-130-010 Purpose. The purpose of this chapter ((is to establish the procedure for entering into a cooperative agreement between the department and volunteer groups pursuant to chapter 75.52 RCW to increase the food fish and shellfish resources of the state, to provide educational opportunity and improve communication between the department and the public. This procedure includes the method of application, review process, priority of distribution of available supplies and technical support, recovery of reimbursable expenses, and the method of revocation of the agreement and termination of the project, including grounds for such action)) shall be to ensure compliance by the department of fish and wildlife with the provisions of chapter 72, Laws of 1984 (Title 75 RCW).

AMENDATORY SECTION (Amending Order 97-245, filed 12/30/97, effective 1/30/98)**WAC 220-130-020 Definitions.** ((For the purposes of this chapter:

(1) Project means a volunteer fisheries resource project.

(2) Commission's designee means the director, deputy director or the assistant director for resource management having departmental authority over the species being enhanced by the volunteer program.

(3) Reimbursable expense means an actual expense of the volunteer cooperative project that may be reimbursed by the department to the project from funds generated by the sale of surplus salmon eggs and salmon carcasses from that project. Reimbursable expenses include but are not limited to: Fish food; hardware items; lumber; telephone; electricity; salary for hired labor; office supplies; mileage; insurance; fish culture supplies. Nonreimbursable expenses include purchases of items that have certificate of title or ownership, including but not limited to real estate and motor vehicles, or expenses for debt reduction.

(4) Volunteer cooperative project surplus salmon eggs means those viable salmon eggs that are surplus to both the needs of all programs of the department and other public entities within the state and to the volunteer cooperative project itself. Priority of use of viable eggs is as established by chapter 220-74 WAC.)) (1) "Volunteer group" means any person or group of persons interested in or party to an agreement with the department of fish and wildlife relating to a cooperative fish or wildlife project.

(2) "Cooperative project" means a project conducted by a volunteer group that will benefit fish, shellfish, game bird, nongame wildlife, or game animal resources of the state and for which the benefits of the project, including fish and game reared and released are available to all citizens of the state. Indian tribes may elect to participate in cooperative fish and wildlife projects with the department.

(3) "Department" means the department of fish and wildlife.

(4) "Reimbursable expenses" means an actual expense of a project that may be reimbursed by the department to the project from funds generated by the sale of surplus salmon carcasses and nonviable surplus salmon eggs from that project.

(5) "Surplus salmon eggs" means those salmon eggs that are surplus to both the needs of all programs of the department and other public entities as described in chapter 220-74 WAC.

(6) "Surplus salmon carcasses" means those salmon carcasses that are surplus to both the needs of all programs of the department and other public entities as described in chapter 220-74 WAC.

(7) "Viable salmon eggs" mean those salmon eggs which are fertile and capable of being cultured.

(8) "Nonviable salmon eggs" mean those eggs which are infertile.

AMENDATORY SECTION (Amending Order 85-07, filed 2/1/85)**WAC 220-130-030 ((Proposal.)) Information required from volunteer groups.** ((1) All proposals for volunteer fisheries resource projects shall be made in writing to the department on the department's application form and shall provide the following information:

(a) Date of proposal.

(b) Name of volunteer group or person proposing the project, including name, address and telephone number of contact person. The volunteer group shall immediately notify the department in writing of a change in contact person.

(c) Location and description of proposed project.

(d) Annual dates of initiation and completion of project, or an indication that the project is ongoing throughout the year.

(e) List of supplies, materials and technical assistance requested from the department and necessary for the completion or operation of the project.

(2) Applications for projects to culture and release food fish and shellfish also must provide:

(a) Number of eggs, larvae, juveniles or adult food fish or shellfish requested by species.

(b) The preferred stock.

(c) The method and type of culturing proposed.

(d) The number of food fish or shellfish to be cultured.

(e) The date of release.

(f) Size at release.

(g) Release location(s).)) The following information should be furnished in writing on forms provided by the department by volunteer groups when applying for a cooperative fish and wildlife project.

(1) Date of application.

(2) Name of volunteer group or person proposing cooperative project. If a group, give the name, address and telephone number of one person in that group who will serve as contact person and project leader.

(3) Location and physical size of project, including a project area map, which clearly indicates the project site(s).

including county, street address (if applicable), property ownership, township, range, section and acreage.

(4) Description of the proposed project, including title, project objectives (how the project will benefit the fish and wildlife resources), methods of achieving objectives, criteria for measuring objectives and a description of how the project will be monitored and maintained.

(5) Estimated beginning and ending date of project.

(6) A project budget which identifies by line item the amount of funding requested to purchase goods and services, contracted services, travel, per diem, private vehicle mileage reimbursement, equipment, a list of other funds which may be available to support the project (including the amount and source of outside funding) and any in-kind contributions.

(7) An estimate of the amount of technical assistance required from the department including the names and titles of department personnel who may be needed.

(8) An estimate of the volunteer time, expressed in staff hours, which the project will require.

(9) If the project is to plant or rear fish or wildlife, the following additional information should be developed, unless exempted by the department:

(a) Species to be produced.

(b) Number of eggs, larvae, juveniles, adult fish, shellfish or wildlife proposed to be incubated, reared or released, by species, as well as the timing of all phases of this activity.

(c) Proposed source of eggs, broodstock or juveniles.

(d) Method and type of culturing proposed.

(e) Date of release.

(f) Size at release.

(g) Release location(s).

(h) Statement about the volunteer groups' knowledge of culture and pathology of the species proposed to be produced.

(i) Availability of professional and technical expertise; i.e., local veterinarian, hatchery nearby, local fish or habitat biologist, etc.

(10) A list of permits or agreements (other than those needed to rear and release fish and wildlife) needed to accomplish the proposed project; i.e., cooperative landowner agreements, water rights, building permits, hydraulic project approval (HPA), shorelines permits, zoning variance, JARPA, Corps of Engineers, etc.

AMENDATORY SECTION (Amending Order 85-07, filed 2/1/85)

WAC 220-130-040 Review ((procedure)) and selection process. (1) ((A written response will be mailed to the contact person within forty five calendar days of receipt of the application. The response shall include notice if the application is incomplete and that additional information is required, or any identifiable conflicts with legally existing land, water, or property rights, or any identifiable and unacceptable biological or resource management conflicts, or any identifiable lack of supplies, labor, or expertise either biological or nonbiological, or financial resources necessary for project completion or operation. The department shall provide suggested modifications to the proposal which would increase its likelihood of approval together with the name and telephone number of a person in the department responsible

for monitoring the review of the proposal, and a list of identifiable state and federal permits that will be required prior to implementation of the project. The list shall not be represented as all inclusive. The department will identify the date by which a final acceptance or rejection of the proposal can be expected together with an explanation of why that date was selected and the process of further review to occur prior to that date.

(2) During its review of the proposal, the department will coordinate with other agencies and Indian Tribes and assist in the preparation of and coordinate the review of any necessary hydraulic project application, shellfish import and transfer permit or live fish import and transfer permit or applicable requirements of the State Environmental Policy Act.

(3) The department will exempt the volunteer group from payment of permit and license fees to the department for activities relating to the project.

(4) The department will determine its ability to meet the requirements of a project for supplies, technical expertise and other assistance, both biological and nonbiological, by considering:

(a) The project's consistency with department goals to preserve, protect and enhance the fishery resources of the state.

(b) The ability to maximize the number of persons participating in or benefitting from the volunteer fisheries resource program.

(c) The desire to maximize public awareness of the resource.)) The application method is on application forms provided by the department specifically for this purpose. Application forms will be available by request from the Olympia headquarters and at all regional offices of the department.

(2) Applications for projects may be submitted at any time, however, applications must be submitted at least sixty days prior to the funding decision deadlines to allow review and evaluation by the department.

(3) Funding decision deadlines will be June 30, September 30 and December 31 in odd-numbered years, March 31 in even-numbered years.

(4) Exceptions to the funding deadline dates will only be allowed in the event of applications for volunteer projects which are responsive to an emergency situation which may arise and which has been declared to be an emergency by the director.

(5) The department will send each applicant, within forty-five days of receipt of each application, a written acknowledgment of the receipt of the application and give the applicant an estimated date when notification of acceptance or rejection of the proposal can be expected. The written acknowledgment will also provide the department's selection criteria and a general description of the review and selection process. Final decisions and notification of acceptance or rejection of proposals where funding is requested will be made only after the biennial budget is passed by the legislature and signed by the governor.

(6) The department will determine when a proposed project might affect the management programs of federal, other state, and local agencies and of treaty tribes and will make contact with these entities, when the department deter-

mines that it is appropriate to do so, during the review and selection process. If the department determines that ongoing coordination between a volunteer group and another agency or tribe would be appropriate, it may be required as a condition of the agreement, when issued.

(7) The department may provide suggested modifications to the proposal which would increase its likelihood of approval together with the name and telephone number of the person within the department responsible for monitoring the review of the proposal.

AMENDATORY SECTION (Amending Order 85-07, filed 2/1/85)

WAC 220-130-050 ((Acceptance or rejection of proposal.)) Criteria used in selecting cooperative projects. ((1) The terms and conditions for an acceptable project will be set forth in a written agreement between the department and the volunteer group and provide specifics for project implementation. Agreements may be for up to five years.

(2) If a proposal is rejected, the department must provide in writing to the volunteer group the reasons for the rejection. The volunteer group may appeal any decision rejecting a proposal to the director or the director's designee.)) The following criteria will be considered by the department in ranking project proposals for funding. These criteria are not rigid but are intended to guide the department in selecting projects that are feasible, cost-effective and complementary with other department programs.

(1) Fish and wildlife commission policies will be used, along with other criteria, to rank proposals. Applicants may wish to compare the objectives of their proposals with the most recent statement of goals, policies and objectives of the fish and wildlife commission to determine whether they are consistent or in conflict.

(2) Program goals, objectives and priorities. Projects will be ranked according to their adherence to program goals, objectives and priorities as outlined in department plans. Applicants may wish to call the operating division(s) within the department most directly concerned with the subject of their proposal to determine whether they are consistent or in conflict.

(3) Costs versus benefits. Project proposals will be evaluated and ranked according to expected ratio of costs to public benefits. Costs will include both grant funds and other funds required, the level of department provided staff assistance needed and the amount for continuing operation and maintenance support needed. Benefits may include direct benefits to fish and wildlife or habitat and benefits to the public in terms of increased recreational or commercial opportunities or increased knowledge about fish and wildlife.

(4) Educational value. Consideration will be given to a project's value in educating and informing the public about the life history and needs of fish and wildlife.

(5) Capabilities of volunteer groups. When considering the approval of a new project, or the renewal or refunding of an existing project, the relative success of that project and the overall capabilities of a particular volunteer group in managing cooperative projects and producing results will be consid-

ered, including the amount of department supervision and assistance required to accomplish the project.

(6) Project types. The department shall encourage and support the development and operation of cooperative projects of the following types:

- (a) Cooperative food fish and game fish enhancement projects.
- (b) Cooperative fish and wildlife habitat improvement projects.
- (c) Cooperative fish or wildlife research projects.
- (d) Cooperative game bird and game animal projects.
- (e) Cooperative information and education projects.
- (f) Cooperative nongame wildlife projects.
- (g) Cooperative shellfish projects.

AMENDATORY SECTION (Amending Order 85-07, filed 2/1/85)

WAC 220-130-060 ((Project termination.)) Acceptance or rejection of proposals. (1) The ((department may revoke approval and terminate projects for cause. Grounds for termination include:

- (a) Violation of the agreement provisions.
- (b) Development of unacceptable biological or resource management conflicts during implementation of the project.
- (c) Unavailability of adequate resources or expertise necessary to complete the project.

(2) Notice of approval revocation shall be mailed to the contact person for the volunteer cooperative, stating the reason for revocation and, should the reason be violation of the agreement provisions, specifying what agreement provisions were violated and how corrective action can be accomplished to continue with the project.

(3) The volunteer cooperative may appeal any decision for agreement revocation or project termination to the director or the director's designee.)) terms and conditions for an acceptable project will be set forth in a written contract between the department and the volunteer group and provide specifics for project implementation. Agreements may be for up to five years.

(2) Each approved agreement will include the following, when determined by the department to be necessary or appropriate:

- (a) Permit to release fish or wildlife.
- (b) Procedures for applying for a hydraulic project approval (HPA).
- (c) Description of methods that will be used to provide the volunteer group with fish, eggs, wildlife, fish food or other available supplies which will be obtained from the department.

(3) If a proposal is rejected, the department must provide in writing to the volunteer group the reasons for the rejection. The volunteer group may appeal any decision rejecting a proposal to the director or the director's designee.

(4) Proposals accepted by the department may not commence until the volunteer group has executed a contract to undertake the project and that contract has been signed by the person within the department with the authority to do so. Any funds expended prior to the acceptance of a cooperative project contract, or orders for supplies or other action by the

volunteer group after the completion date which would constitute a financial obligation will be considered the responsibility of the volunteer group.

AMENDATORY SECTION (Amending Order 97-245, filed 12/30/97, effective 1/30/98)

WAC 220-130-070 ((Project recovery of reimbursable expenses.)) Termination or revocation of agreements. (1) ((For a project to recover expenses from the sale of surplus salmon carcasses and eggs resulting from project supplementation activities, the following requirements must first be met:

(a) Salmon must be returning to a department approved group facility (hatchery, trap or weir);

(b) An approved and current salmon rearing project must be on file with the department;

(c) The agency must declare that a surplus exists beyond the needs of the department, tribes, other public entities, volunteer cooperative projects and regional fisheries enhancement group requirements; and

(d) An annual budget must be presubmitted and approved by the department.

The department shall indicate which expenses are approved for reimbursement. The budget must be submitted to the department by the first of July preceding the expected return of the salmon, and show expected expenses. To collect the funds the project shall annually submit a list of expenses for review by the commission or its designee. The department shall require actual receipts for items purchased. Expenses shall be limited to the actual annual operation expenses of the project as detailed in the preapproved budget. No profit may be realized by the project and no money shall apply to amortization or depreciation.

(2) The department may sell surplus salmon carcasses and nonviable eggs of a project. If the department cannot sell the surplus salmon carcasses and nonviable eggs of a project, then the project may sell them directly, subject to the following guidelines:

(a) Surplus salmon carcasses and nonviable eggs shall be sold under a competitive bidding system;

(b) The project must provide bid information to the commission or its designee for approval prior to any sale;

(c) Revenue resulting from the sale must be deposited by the successful bidder into a special account of the department and used solely to fund the approved expenses of the project that produced the surplus;

(d) Salmon products provided to the volunteer cooperative project by the successful bidder as part of the approved sale arrangement shall strictly adhere to applicable department of health and department of agriculture requirements;

(e) The project shall provide to the department detailed accounting records of salmon products provided by the successful bidder as part of the approved sale arrangement, including: Types and amount of salmon product received; monthly disposition of salmon products including amount sold, amount in storage, or amount no longer viable, and total moneys collected; and

(f) All revenue from the sale of salmon products provided to the successful bidder as part of the approved sale

arrangement shall be deposited into a special account of the department and used solely to fund the approved expenses of the volunteer cooperative project that produced the surplus.

(3) The department may sell the surplus viable salmon eggs of a project. Surplus viable salmon eggs will be sold by the department as prescribed in chapter 220-74 WAC. Revenue received shall be deposited into a special account of the department and used solely to fund the approved expenses of the project that produced the surplus. Surplus viable salmon eggs may not be sold by a project.

(4) Revenue from the sale of surplus salmon carcasses and eggs placed into the special account of the project producing the surplus may not exceed the amount reflected by the current preapproved budget for project expenses. Moneys accruing in excess of the approved expense amount, as determined by the commission or its designee, shall annually be remitted to the state general fund.

(5) All fish produced from a project are intended for release into state waters. Live fish will not be transported from a project without prior written approval of the department.

(6) Surplus carcasses of salmon returning to an approved volunteer cooperative project may be seeded into and along streams for the purpose of nutrient enrichment if a plan has been preapproved and coordinated with the department. The department may revoke approval and terminate agreements for cause. Grounds for termination include:

(a) Violation of the agreement provisions.

(b) The development of unacceptable biological or resource management conflicts.

(c) The unavailability of adequate financial or biological resources to continue participation by the department.

(d) If any fish or wildlife laws or regulations have been violated.

(2) Notice of revocation shall be mailed to the contact person for the volunteer group stating the reason for the revocation and, should the reason be violation of the agreement provisions, specifying what agreement provisions were violated and how corrective action may be taken to continue the project.

(3) The volunteer group may appeal any decision for agreement revocation or project termination to the director or the director's designee.

NEW SECTION

WAC 220-130-080 Project recovery of reimbursable expenses. Cooperative projects which rear salmon have the potential for generating income from the sale of surplus salmon carcasses and eggs derived from fishes produced at those projects, and to which salmon return to spawn at the end of their life cycle. If the department determines that it is appropriate to do so, such cooperative projects may, under the guidance of the department and by administrative rules and guidelines established for this purpose, recover some of the cooperative projects operating costs through the sale of nonviable salmon eggs and carcasses. It is understood that the primary objective of this provision is not to establish projects which constitute fish farms, but to allow those projects which may generate surplus fish which elude sport,

commercial or tribal fisheries to sell the resulting surplus to help defray the cost of the particular cooperative project.

(1) In order for a project to recover reimbursable expenses, the project must have an annual budget presubmitted and approved by the department. The budget must generally show expected expenses, including the names of all persons expected to draw salaries as hired labor.

(2) Under administrative rules developed for this purpose, the cooperative project may sell nonviable salmon eggs and carcasses by soliciting competitive bids from approved buyers, as determined by the department.

(3) Volunteer cooperative project surplus salmon eggs shall be sold as prescribed by chapter 220-74 WAC, Surplus Salmon Eggs.

(4) All moneys generated by such sales shall be paid to the department and placed into a special account used solely to fund the reimbursable expenses of the cooperative project which generated the funds.

(5) In order to utilize the funds generated by such sales, a cooperative project must submit a list of expenses accompanied by original invoices, including signed time sheets for hired labor salary expenses, which clearly shows that the expenses relate to the presubmitted budget for the project which comply with all accounting and contract requirements.

(6) Reimbursable expenses shall be limited to the actual annual operating expenses of the project. No profit may be realized by the project, and no moneys shall apply to amortization or depreciation.

(7) Moneys accruing in excess of the reimbursable expense amount, as determined by the director, shall annually be remitted to the state general fund.

(8) Viable surplus salmon eggs may not be sold, bartered, exchanged or disposed of by any volunteer group.

(9) Surplus salmon carcass sales may not be allowed if the department determines that they would be more appropriately utilized to reseed streams in an effort to restore or enhance habitat through nutrient enrichment.

WSR 99-11-007
PERMANENT RULES
DEPARTMENT OF TRANSPORTATION

[Filed May 7, 1999, 8:53 a.m.]

Date of Adoption: May 3, 1999.

Purpose: To establish the date, time and place of commission meetings and to correct the address of the Transportation Building to 310 Maple Park Drive, Olympia, WA 98504-7308.

Citation of Existing Rules Affected by this Order: Amending WAC 468-500-001.

Statutory Authority for Adoption: RCW 47.01.071.

Adopted under notice filed as WSR 99-06-004 on February 18, 1999.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

May 3, 1999

Thomas A. Green
 Commission Chair

AMENDATORY SECTION (Amending WSR 97-06-002, filed 2/20/97, effective 3/23/97)

WAC 468-500-001 Commission meetings. Regular public meetings of the Washington state transportation commission are held monthly on the third Thursday of every month and on the Wednesday immediately preceding that day commencing at 9:00 a.m. or such other time as determined by the commission chair. Each such regular meeting shall be held in the transportation commission meeting room (1D2) in the Transportation Building, ((410)) 310 Maple Park Drive, Olympia, Washington. Persons desiring to know the starting time for a specific meeting can call the commission office at (360) 705-7070.

WSR 99-11-017
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Medical Assistance Administration)

[Filed May 10, 1999, 2:35 p.m.]

Date of Adoption: May 10, 1999.

Purpose: To adopt changes in the federal standards for community spouses and family needs allowances. To incorporate a state plan amendment allowing an increase in the personal needs allowance (PNA) for certain persons. To implement a section of the Balanced Budget Act (BBA) of 1997 that mandates including certain veteran benefits when the department determines how much a person is able to participate in the cost of long-term care services.

Citation of Existing Rules Affected by this Order: Amending WAC 388-513-1380.

Statutory Authority for Adoption: RCW 72.36.160, 74.04.050, 74.04.057, 74.08.090, 74.09.500.

Other Authority: Section 1924(g) of the Social Security Act, Section 4715 of the BBA of 1997 (Public Law 105-33, HR 2015).

Adopted under notice filed as WSR 99-06-100 on March 3, 1999.

Changes Other than Editing from Proposed to Adopted Version: Changes to the standards for a community spouse

monthly needs allowance, for a monthly maintenance needs amount for dependent or minor children or dependent parent or dependent sibling, and for a standard shelter allocation were made to reflect changes in federal standards.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

May 10, 1999

Marie Myerchin-Redifer, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 98-08-077, filed 3/31/98, effective 4/1/98)

WAC 388-513-1380 Institutional—Participation—Client ((share of monthly institutional payments)) cost of care. This section describes ((the)) allocations ((which can be deducted from the institutional client's)) of income and excess resources ((in order to determine the amount available for the client's participation in the cost of care)) used to determine a person's participation in the cost of care for institutional services in a medical facility. Income allocations described in this section are used to reduce countable income that remains after exclusions described in WAC 388-513-1340.

(1) ((The client's excess resources are available to meet the cost of care after the following deductions in this order)) Allocations used to reduce excess resources are amounts for incurred medical expenses, not subject to third-party payment, for which the person is liable, including:

(a) Health insurance and Medicare premiums, deductions, and co-insurance ((not paid by a third party)) charges; and

(b) ((Nonecovered medical bills which are the liability of the client and not paid by a third party)) Necessary medical care recognized under state law, but not covered under the state's Medicaid plan.

(2) ((The allocations used to reduce excess resources under subsection (1) of this section cannot be used to reduce income under subsection (3) of this section.))

(3) The client's nonexempt income is available to meet the cost of care after the following deductions in this)) Allocations used to reduce countable income are made in the following order:

(a) ((Deductions)) Amounts described in subsection ((3)) (2)(a) may not total more than the one-person medically needy income level (MNIL):

(i) A personal needs allowance (PNA) as follows:

(A) One hundred sixty dollars for a ((veteran)) person living in a ((Medicaid-certified)) state veteran((s))'s home ((nursing facility));

(B) Ninety dollars for a ((single)) veteran((;)) or ((widow or widower of)) a ((veteran receiving an improved)) veteran's surviving spouse, who receives an improved pension and does not live in a state veterans' home; or

(C) Forty-one dollars and sixty-two cents for all other ((clients)) persons in a medical facility.

(ii) Federal, state, or local income taxes:

(A) Mandatorily withheld from earned or unearned income for income tax purposes before receipt by the ((client)) person; or

(B) Not covered by withholding, but are owed, become an obligation, or have been paid by the ((client)) person during the time period covered by the PNA.

(iii) Wages for a ((client)) person who:

(A) Is SSI-related; and

(B) Receives the wages as part of a department-approved training or rehabilitative program designed to prepare the ((client)) person for a less restrictive placement. When determining this deduction employment expenses are not deducted.

(iv) Guardianship fees and administrative costs including any attorney fees paid by the guardian, after June 15, 1998, only as allowed by chapter 388-79 WAC.

(b) Income garnished for child support:

(i) For the time period covered by the PNA; and

(ii) Not deducted under another provision in the post-eligibility process.

(c) A monthly needs allowance for the community spouse not to exceed, effective January 1, ((1998)) 1999, two thousand ((nineteen)) forty-nine dollars, unless ((specified)) a greater amount is allocated as described in subsection ((5)) (4) of this section. The monthly needs allowance ((is)):

(i) Consists of a combined total of both:

(A) An amount added to the community spouse's gross income to provide a total of one thousand three hundred fifty-eight dollars;

((ii)) and

(B) Excess shelter expenses as specified under subsection ((4)) (3) of this section; and

((iii)) (ii) Is allowed only to the extent the ((client's)) person's income is made available to the community spouse.

((e)) (d) A monthly maintenance needs amount for each dependent or minor child, dependent parent or dependent sibling:

(i) Residing with the community spouse, equal to one-third of the amount that one thousand three hundred fifty-((eight)) seven dollars exceeds the family member's income. Child support received from an absent parent is the child's income.

(ii) Not residing with the community spouse, equal to the MNIL for the number of family members in the home less the income of the family members.

((d)) ~~Incurred medical expenses, not subject to third-party payment, which are the current liability of the client including:~~

(i) ~~Health insurance premiums, deductions, and coinsurance amounts; and~~

(ii) ~~Necessary medical care recognized under state law, but not covered under Medicaid.~~)

(e) Incurred medical expenses described in subsections (1)(a) and (b) not used to reduce excess resources.

(f) Maintenance of the home of a single person or institutionalized couple:

(i) Up to one hundred percent of the one-person federal poverty level per month;

(ii) Limited to a six-month period;

(iii) When a physician has certified that the ((client)) person is likely to return to the home within the six-month period; and

(iv) When social service staff documents initial need for the income exemption and reviews the person's circumstances after ninety days.

((4)) (3) For the purposes of this section, "excess shelter expenses" equal the actual expenses under subsection ((4)) (3)(a) ((of this section)) less the standard shelter allocation under subsection ((4)) (3)(b) ((of this section)):

(a) Shelter expenses are the actual required maintenance expenses for the community spouse's principal residence for:

(i) Rent;

(ii) Mortgage;

(iii) Taxes and insurance;

(iv) Any maintenance care for a condominium or cooperative; and

(v) The food stamp standard utility allowance, provided the utilities are not included in the maintenance charges for a condominium or cooperative.

(b) The standard shelter allocation is four hundred ((eight)) seven dollars, effective April 1, ((1997)) 1998.

((5)) (4) The amount ((the institutional spouse may allocate)) allocated to the community spouse may be greater than the amount in subsection ((3)(b) of this section) (2)(c) only when:

(a) A court enters an order against the ((institutionalized client)) person for the support of the community spouse; or

(b) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

((6)) (5) A person receiving SSI ((clients)) shall continue to receive total payment under 1611 (b)(1) of the Social Security Act for the first three full calendar months of institutionalization in a public or Medicaid-approved medical institution or facility when the:

(a) Stay in the institution or facility is not expected to exceed three months; and

(b) The ((client)) person plans to return to former living arrangements.

[Filed May 13, 1999, 2:33 p.m.]

Date of Adoption: May 13, 1999.

Purpose: WAC 246-100-042 Reporting of blood lead levels, adverse health effects resulting from elevated levels of lead in the blood has been acknowledged as a public health concern throughout the United States; epidemiologic investigation based on reports of the results of blood level tests may contribute to the understanding of the condition, its prevalence within the state of Washington, and especially the extent to which the condition affects both children and those who may be exposed to lead in the work place; rapid follow-up and appropriate management of potentially hazardous blood lead levels is necessary to assure safe public health, and assists in development of programs to prevent future lead over-exposure.

Citation of Existing Rules Affected by this Order: Amending WAC 246-100-042.

Statutory Authority for Adoption: RCW 43.20.050.

Adopted under notice filed as WSR 99-06-091 on March 3, 1999.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Protects the public health by ensuring the continued reporting of blood lead levels for children and workers at risk of lead poisoning.

Effective Date of Rule: May 14, 1999.

May 10, 1999

Jim Robertson

Acting Executive Director

State Board of Health

AMENDATORY SECTION (Amending WSR 96-11-077, filed 5/13/96, effective 6/13/96)

WAC 246-100-042 Reporting of blood lead levels. (1) ((Pursuant to WAC 246-100-041,)) The state health officer finds as follows:

(a) Adverse health effects resulting from elevated levels of lead in the blood has been acknowledged as a public health concern throughout the United States;

(b) Epidemiologic investigation based on reports of the results of blood level tests may contribute to the understanding of the condition, its prevalence within the state of Washington, and especially the extent to which the condition affects both children and those who may be exposed to lead in the work place;

(c) Rapid follow-up and appropriate management of potentially hazardous blood lead levels is necessary to assure safe public health, and assists in development of programs to prevent future lead over-exposure.

(2) **Definitions.** For the purposes of this section, the following words and phrases have the following meanings:

(a) "Blood lead level" means a measurement of lead content in whole blood.

(b) "Reporting organization" means any medical laboratory which performs blood lead analysis at a site within the state of Washington; or any individual or organization which sends blood specimens to an out-of-state medical laboratory for lead testing, including in-state organizations which receive blood specimens from other in-state individuals or organizations, and then send those specimens to an out-of-state testing laboratory.

(c) "Testing laboratory" means a medical laboratory which performs a blood lead analysis.

(3) Reporting of blood lead levels.

(a) A reporting organization shall report all blood lead levels to the department of health, including those which are within normal limits. The department of health shall send a copy of any report with a blood lead level equal to or greater than 40 micrograms per deciliter in adults, or equal to or greater than 10 micrograms per deciliter in children less than 15 years of age, to the local health department serving the jurisdiction in which the tested person resides.

(b) An individual or organization which sends blood specimens to an out-of-state laboratory may fulfill its reporting obligation by arranging for the testing laboratory to submit adequate reports.

(c) Reports shall be made in a format approved by the department.

(d) For blood lead levels equal to or greater than 40 micrograms per deciliter for adults, or equal to or greater than 20 micrograms per deciliter in children less than 15 years of age, the department must be notified by telephone, fax or mail within seven calendar days of the date test was performed, or if the test was performed by an out-of-state laboratory the date when the test result was received. Telephone reports must be supplemented by a written report submitted no later than the fifth business day of the next month after the telephone contact. In event age of patient is not known, the reporting organization shall follow the reporting schedule for children less than 15 years of age.

(e) For blood lead levels equal to or greater than 20 micrograms per deciliter in adults, or equal to or greater than 10 micrograms per deciliter in children less than 15 years of age, a report shall be made to the department no later than the fifth business day of the next month after the month in which the test was performed, or if the test was performed by an out-of-state laboratory the month during which the test result was received. In the event age of patient is not known, the report-

ing organization shall follow the reporting schedule for children less than 15 years of age.

(f) Information to be reported to the department for blood lead levels specified in parts (3)(d) and (3)(e) shall include the following:

- (i) Name of the person tested;
- (ii) Name of the reporting organization;
- (iii) Name of the testing laboratory;
- (iv) Date specimen received;
- (v) Blood lead level of person tested;
- (vi) Name of health care provider ordering test;
- (vii) Address or telephone number of health care provider ordering test, if available;
- (viii) Date of birth or the age of the person tested, if available;
- (ix) Sex of person tested, if available;
- (x) Race and ethnicity of person tested, if available;
- (xi) Whether blood specimen is venous or capillary, if available;
- (xii) Free erythrocyte or zinc protoporphyrin or zinc protoporphyrin/heme ratio, if performed, when available;
- (xiii) Address and occupation of the person tested, or if a child the parents' occupation, if available;
- (xiv) Name, address and telephone number of the employer, or if a child the parents' employer, if available;

(g) For all other blood lead levels, the reporting organization must either report the information specified in (3)(f) or submit a monthly summary report by the fifth day of the next month. The monthly summary must be categorized by the number of tests performed on specimens for children less than 15 years of age, the number of tests performed for individuals 15 years of age or older and the number of tests performed where patient's age is unknown. In each category the number of tests must be sorted by one of the following geographic indicators: patient county of residence, or patient postal zip code of residence, or provider county of practice, or provider postal zip code of practice.

(4) Responsibilities of health care providers. Upon request of a representative of the department of health or the department of labor and industries, a health care provider who has ordered a blood lead test shall provide the patient's address and telephone number to the department of health or the department of labor and industries, and when known the following information:

- (a) Circumstances of lead exposure;
- (b) Employer's name, address and telephone number, or, if a child, the same information on the employers of the parents;
- (c) Occupation of person tested, or, if a child, occupation of parents;
- (d) Type of industry of employer of person tested, or, if a child, type of industry of the employers of the parents;
- (e) Reason for drawing lead level.

(5) Confidentiality.

(a) The medical laboratory report and all patient information provided by the health care provider shall be maintained in a confidential manner as with other disease reports and are not subject to public disclosure in any form under which the patient may be identified.

(b) The department of labor and industries shall have full access to information collected pursuant to this section, for the purposes of research, analysis, and follow-up of blood lead levels.

((6) ~~This rule shall apply to tests performed for blood specimens drawn between May 15, 1996, and May 14, 1999.~~))

WSR 99-11-039
PERMANENT RULES
DEPARTMENT OF LICENSING

[Filed May 14, 1999, 11:03 a.m.]

Date of Adoption: May 14, 1999.

Purpose: To establish the minimum hours for continuing education courses and seminars.

Citation of Existing Rules Affected by this Order: Amending WAC 308-125-090 Continuing education required.

Statutory Authority for Adoption: RCW 18.140.030(8).

Adopted under notice filed as WSR 99-08-028 on March 30, 1999.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

May 14, 1999

Alan E. Rathbun
 Assistant Director

AMENDATORY SECTION (Amending WSR 97-02-004, filed 12/20/96, effective 1/20/97)

WAC 308-125-090 Continuing education required.

(1) As a prerequisite to renewal of certification or licensure, the holder of a certificate or license shall present evidence satisfactory to the director of successful completion of the continuing education requirements of this section.

(2) The continuing education requirements for renewal of certification or licensure shall be the completion by the applicant of twenty classroom hours of instruction in courses or seminars which have received the approval of the director. Courses must be completed within the term of certification or licensure immediately preceding renewal: Provided, That effective January 1, 1998, the number of classroom hours is

twenty-eight; further, every other renewal period, the holder of a certificate or license will present evidence of successful completion of at least fifteen hours of approved USPAP related continuing education. The hours of USPAP education may be included in the total education hours submitted for both the current and previous renewal periods.

(3) In order for courses or seminars to be accepted under subsection (2) of this section, the course or seminar must be a minimum of ((four)) two hours in length and be directly related to real estate appraising. However, a maximum of one-half of the continuing education hours required for renewal can be in two-hour seminars or courses.

(4) An examination is not required for courses or seminars taken for continuing education classroom hours. The exception is the fifteen-hour Uniform Standards of Professional Appraisal Practice (USPAP) course when required by the course provider.

(5) The requirement under subsection (2) of this section may be met by participation other than as a student in educational process and programs approved by the director including teaching, program development, and authorship of textbooks and other written instructional materials.

(6) Courses or seminars taken to satisfy the continuing education requirement for general real estate appraisers, should include coverage of real estate appraisal related topics, such as:

- (a) Ad valorem taxation.
- (b) Arbitrations.
- (c) Business courses related to practice of real estate.
- (d) Construction estimating.
- (e) Ethics and standards of professional practice.
- (f) Land use planning, zoning, and taxation.
- (g) Management, leasing, brokerage, timesharing.
- (h) Property development.
- (i) Real estate appraisal (valuations/evaluations).
- (j) Real estate financing and investment.
- (k) Real estate law.
- (l) Real estate litigation.
- (m) Real estate related computer applications.
- (n) Real estate securities and syndication.
- (o) Real property exchange.
- (p) Such other presentations approved by the director.

(7) Courses or seminars taken to satisfy the continuing education requirement for residential real estate appraisers should include coverage of real estate appraisal related topics, such as:

- (a) Ad valorem taxation.
- (b) Business courses related to practice of real estate.
- (c) Construction estimation.
- (d) Ethics and standards of professional practice.
- (e) Land use planning, zoning, taxation.
- (f) Property development.
- (g) Real estate financing and investment.
- (h) Real estate law.
- (i) Real estate related computer applications.
- (j) Real estate securities and syndication.
- (k) Real property exchange.
- (l) Real estate feasibility and marketability studies.
- (m) Such other presentations approved by the director.
- (n) Real estate securities and syndication.

(o) Real estate property exchange.

(p) Such other presentations approved by the director.

(8) Courses or seminars taken to satisfy the continuing education requirement for licensed real estate appraisers should include coverage of real estate appraisal related topics, such as:

(a) Ad valorem taxation.

(b) Arbitration.

(c) Business courses related to practice of real estate appraisal.

(d) Construction estimating.

(e) Ethnics and standards of professional practice.

(f) Land use planning, zoning, and taxation.

(g) Management, leasing brokerage, timesharing.

(h) Property development.

(i) Real estate appraisal (valuations/evaluations).

(j) Real estate law.

(k) Real estate litigation.

(l) Real estate financing and investment.

(m) Real estate appraisal related computer applications.

(n) Real estate securities and syndication.

(o) Real property exchange.

(p) Such other presentations approved by the director.

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

May 17, 1999

Marie Myerchin-Redifer, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-478-0070 Monthly income and countable resource standards for medically needy (MN) and medically indigent ((MN and) MI) programs. (1) Beginning January 1, ((1998)) 1999, the medically needy income level (MNIL) and MI monthly income standards ((to be applied to a medical assistance unit)) are as follows:

(a) One person	\$((521)) 527
(b) Two persons	\$592
(c) Three persons	\$667
(d) Four persons	\$742
(e) Five persons	\$858
(f) Six persons	\$975
(g) Seven persons	\$1,125
(h) Eight persons	\$1,242
(i) Nine persons	\$1,358
(j) Ten persons and more	\$1,483

(2) The MNIL standard for a person((s)) meeting ((the)) institutional status requirements ((of chapter 388-513 WAC, a special MNIL is used. That standard)) is in WAC 388-513-1305(2).

(3) ((The MN and MI program)) Countable resource standards for the MN and MI programs are:

(a) One person	\$2,000
(b) A legally married couple	\$3,000
(c) For each additional family member add	\$50

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-478-0080 SSI-related ((CNIL monthly income)) categorically needy income level (CNIL) and countable resource standards. (1) The SSI-related CNIL standard is the same as the SSI monthly payment standard based upon the area of the state where the person lives. Area 1 is defined as the following counties: King, Pierce, Snohomish, Thurston, and Kitsap. Area 2 is all other counties. Beginning January 1, 1999, the CNIL monthly income standards are as follows:

	Area 1	Area 2
(a) Single person	\$((521.00)) 527.00	\$((500.55)) 506.55
(b) A legally married couple who are both eligible		

Date of Adoption: May 17, 1999.

Purpose: To implement the increased federal standards for the one-person medically needy income level, for the medically indigent program, and the SSI-related categorically needy income level. It has also been rewritten in order to comply with the principles of Executive Order 97-02.

Citation of Existing Rules Affected by this Order: Amending WAC 388-478-0070 and 388-478-0080.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.575.

Adopted under notice filed as WSR 99-08-118 on April 7, 1999.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

\$((762.00))	\$((741.00))
<u>772.00</u>	<u>751.00</u>

(2) The countable resource standards for the SSI-related CN medical program are:

(a) One person	\$2,000
(b) A legally married couple	\$3,000

WSR 99-11-070
PERMANENT RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[General Order No. R-463, Docket No. UT-971514—Filed May 18, 1999, 1:13 p.m.]

In the matter of amending WAC 480-120-139 relating to privacy in commercial telecommunications; regulating telecommunication company use of customer proprietary network information (CPNI).

STATUTORY OR OTHER AUTHORITY: The Washington Utilities and Transportation Commission takes this action under Notice No. WSR 99-07-107, filed with the code reviser on March 23, 1999. The commission brings this proceeding pursuant to RCW 80.01.040.

STATEMENT OF COMPLIANCE: This proceeding complies with the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 34.21C [43.21C] RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

DATE OF ADOPTION: The commission adopted the amended rule on May 17, 1999.

CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE: The proposed amendment to WAC 480-120-139 would remove reference to CPNI and Privacy in section 139(5) to bring Washington state regulation of CPNI and customer privacy into consistency with federal regulations. The amended rule would provide consistency between WAC 480-120-139 and other rules by deleting provisions that have been adopted and expanded upon in WAC 480-120-144, 480-120-151, 480-120-152, 480-120-153 and 480-120-154.

REFERENCE TO AFFECTED RULES: This rule amends the following section of the Washington Administrative Code: WAC 480-120-139.

PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER: The commission filed a preproposal statement of inquiry (CR-101) on November 21, 1997, at WSR 97-23-087.

ADDITIONAL NOTICE AND ACTIVITY PURSUANT TO PREPROPOSAL STATEMENT: The preproposal statement advised interested persons that the commission was considering entering a rule making on customer proprietary network information (CPNI). The earlier history of this rule making is set out in General Order No. R-459, filed at WSR 99-05-015. In that order, the commission stated its intention to amend WAC 480-120-139 as set forth herein, but the com-

mission did not take the procedural steps necessary to accomplish the adoption.

NOTICE OF PROPOSED RULE MAKING: The commission filed a supplemental notice of proposed rule making (CR-102) on March 23, 1999, at WSR 99-07-107. The commission scheduled this matter for oral comment and adoption under Notice No. WSR 99-07-107 at 9:00 a.m., Wednesday, April 28, 1999, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. The notice provided interested persons the opportunity to submit written comments to the commission.

COMMENTERS (WRITTEN COMMENTS): The commission received no comments regarding the commission's proposal to amend WAC 480-120-139.

RULE-MAKING HEARING: The proposed amendment was considered for adoption, pursuant to the notice, in a rule-making hearing scheduled during the commission's regularly scheduled open public meeting on April 28, 1999, before Commission Chair Marilyn Showalter, Commissioner Richard Hemstad, and Commissioner William R. Gillis. The commission heard oral comments from Rebecca Beaton, representing commission staff. No other persons offered oral comments.

COMMISSION ACTION: After considering all of the information regarding this proposal, the commission adopted the amended rule as filed in the notice of proposed rule making.

STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE: In reviewing the entire record, the commission determines that WAC 480-120-139 should be amended as set forth in Appendix A, as a rule of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

ORDER

THE COMMISSION ORDERS: 1. WAC 480-120-139 is adopted to read as set forth in Appendix A, as a rule of the Washington Utilities and Transportation Commission, to take effect on the thirty-first day after the date of filing with the code reviser pursuant to RCW 34.05.380(2).

2. This order and the rule set out below, after being recorded in the register of the Washington Utilities and Transportation Commission, shall be forwarded to the code reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, this 17th day of May, 1999.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
 Marilyn Showalter, Chairwoman
 Richard Hemstad, Commissioner
 William R. Gillis, Commissioner

AMENDATORY SECTION (Amending Order R-442 and Order R-443, Docket No. UT-960942, filed 8/29/97 and 9/29/97, effective 9/29/97 and 10/30/97)

WAC 480-120-139 Changes in local exchange and intrastate toll services. (1) Verification of orders. A local exchange or intrastate toll carrier to whom service is being

changed ("new telecommunications company") may not submit a change order for local exchange or intrastate toll service until the order is confirmed in accordance with one of the following procedures:

(a) The telecommunications company has obtained the customer's written authorization to submit the order which includes the following information from the customer:

(i) The customer billing name, billing telephone number and billing address and each telephone number to be covered by the change order;

(ii) The decision to change; and

(iii) The customer's understanding of the change fee.

(b) The new telecommunications company has obtained the customer's authorization, as described in (a) of this subsection, electronically.

Telecommunications companies electing to confirm sales electronically shall establish one or more toll free telephone numbers exclusively for that purpose.

Calls to the number(s) shall connect a customer to a voice response unit, or similar, that records the required information regarding the change, including automatically recording the originating automatic number identification (ANI).

(c) An appropriately qualified and independent third party operating in a location physically separate from the telemarketing representative has obtained the customer's oral authorization to submit the change order that confirms and includes appropriate verification data in (a) of this subsection.

(2) Implementing order changes.

(a) Telemarketing orders. Within three business days of any telemarketing order for a change, the new telecommunications company must send each new customer an information package by first class mail containing at least the following information concerning the requested change:

(i) The information is being sent to confirm a telemarketing order placed by the customer.

(ii) The name of the customer's current telecommunications company.

(iii) A description of any terms, conditions or charges that will be incurred.

(iv) The name of the newly requested telecommunications company.

(v) The name of the person ordering the change.

(vi) The name, address and telephone number of both the customer and the soliciting telecommunications company.

(vii) A postpaid postcard which the customer can use to deny, cancel or confirm a service order.

(viii) A clear statement that if the customer does not return the postcard, the customer's service will be switched fourteen days after the date the information package was mailed. If customers have cancelled their orders during the waiting period, the new telecommunications company cannot submit the customer's order.

(ix) The name, address and telephone number of a contact point at the commission for consumer complaints.

(x) The requirements in (a)(vii) and (viii) of this subsection do not apply if authorization is obtained pursuant to subsection (1) of this section.

(b) The documentation of the order shall be retained by the new telecommunications company, at a minimum, for twelve months to serve as verification of the customer's authorization to change telecommunications company. The documentation will be made available to the customer and to the commission upon request.

(3) Customer initiated orders. The new telecommunications company receiving the customer initiated request for a change of local exchange and/or intrastate toll shall keep an internal memorandum or record generated at the time of the request. Such internal record shall be maintained by the telecommunications company for a minimum of twelve months to serve as verification of the customer's authorization to change telecommunications company. The internal record will be made available to the customer and to the commission upon request. Within three business days of the order, the telecommunications company must send each new customer an information package by first class mail containing at least the following information concerning the request to change as defined in subsection (2)(a)(ii), (iii), (iv), (v) of this section.

(4) Remedies. In addition to any other penalties provided by law, a telecommunications company initiating an unauthorized change order shall receive no payment for service provided as a result of the unauthorized change and shall promptly refund any amounts collected as a result of the unauthorized change. The subscriber may be charged, after receipt of the refund, for such service at a rate no greater than what would have been charged by its authorized telecommunications company, and any such payment shall be remitted to the customer's authorized telecommunications company.

((5) Use of customer information.

~~(a) A telecommunications company marketing services may not use its customer proprietary network information or the customer proprietary network information of another telecommunications company.~~

~~(b) Except to provide its own billing, collection, network operations, and as authorized by law, a telecommunications company may not disclose customer proprietary network information.~~

~~(e) A telecommunications company may not make telephone solicitation or telemarketing calls using its list of customers with nonpublished or unlisted numbers unless it has notified each such customer at least once in the past year that the company makes such calls to its customers with nonpublished or unlisted numbers and that the customer has a right to request that the company make no such calls.)~~

WSR 99-11-075
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Medical Assistance Administration)

[Filed May 18, 1999, 2:30 p.m.]

Date of Adoption: May 18, 1999.

Purpose: To waive the requirement for a face-to-face interview for family medical programs. It has also been

rewritten in order to comply with the principles of Executive Order 97-02.

Citation of Existing Rules Affected by this Order: Amending WAC 388-452-0005.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.530.

Other Authority: 42 C.F.R. 435.907.

Adopted under notice filed as WSR 99-08-015 on March 29, 1999.

Changes Other than Editing from Proposed to Adopted Version: Added language in subsection (2) concerning a person's medical eligibility must be determined when a person is denied cash and/or food stamp benefits for failure to appear for an interview.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

May 18, 1999

Marie Myerchin-Redifer, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-452-0005 Interview requirements. (1) ~~(Persons applying for assistance programs have a single in-office interview unless an alternate type of interview is requested and approved. The interview is conducted in:~~

~~(a) A community services office; or~~

~~(b) A Social Security Administration district office for SSI applicant or recipient assistance units applying for food assistance programs)) When the client's application or review is for a combination of cash, food, or medical programs the department requires only a single interview.~~

~~(2) ((The person who attends the eligibility interview is:~~

~~(a) For food assistance, a responsible member of the assistance unit or an authorized representative as defined in WAC 388-462-0005; or~~

~~(b) For cash assistance and medical, an applicant or someone representing the applicant when the applicant is unable to come into the office)) The client has an interview when they apply for or have an eligibility review for cash, food, or medical benefits. However, the client is not required to attend an interview when the client's application or review is only for medical benefits. When the client's application for cash or food stamp eligibility is denied because the client did~~

not appear for an interview, the department must continue to process the request for medical benefits:

(a) For a pregnant woman;

(b) For a child under the age of nineteen;

(c) For a family with children under the age of nineteen;

or

(d) When the department has enough information to determine eligibility or can obtain the information by mail.

~~(3) ((TANF and SFA assistance units are required to have an in-office interview at least once every twelve months for redetermination of eligibility)) The client or another person who can provide information about the assistance unit must attend the interview. The client may bring another person to the interview. The client may choose another person to attend the interview for them when:~~

~~(a) The client cannot come to the local office for a cash or medical program eligibility determination; or~~

~~(b) The client has an authorized representative as described in WAC 388-462-0005 for food assistance.~~

~~(4) ((A client may bring anyone to the interview.~~

~~(5) Persons applying for medical only are not required to have an in-office interview when the person:~~

~~(a) Is pregnant and the application is for a pregnancy related program; or~~

~~(b) Is applying only for a child under nineteen years of age and the application is for a medical program for children.~~

~~(6) Applicants may have an alternate type of interview rather than an in-office interview. An alternate type of interview is completed:~~

~~(a) By telephone;~~

~~(b) By a scheduled home visit; or~~

~~(c) For medical only programs, through the mail.~~

~~(7) Applicants may have an alternate type of interview when they request an alternate type and:~~

~~(a) They are unable to appoint an authorized representative;~~

~~(b) They do not have a responsible assistance unit member able to come into the office because of hardships; or~~

~~(e) For medical programs, there is adequate information to determine eligibility)) The department usually holds the interview at the local office. The client may have a scheduled home visit or a telephone interview if attending an interview at the local office causes a hardship for the client or the client's representative.~~

WSR 99-11-076

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Medical Assistance Administration)

[Filed May 18, 1999, 2:32 p.m.]

Date of Adoption: May 18, 1999.

Purpose: To eliminate exemptions from estate recovery for clients with community property agreements, exempts cost of state-funded protective services from estate recovery, and adds effective dates. It has also been rewritten in order to comply with the principles of Executive Order 97-02.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-527-2735, 388-527-2752 and 388-527-2753; and amending WAC 388-527-2730, 388-527-2740, 388-527-2742, 388-527-2750, 388-527-2754, and 388-527-2790.

Statutory Authority for Adoption: RCW 43.20B.080 and 74.08.090.

Other Authority: RCW 74.34.010.

Adopted under notice filed as WSR 99-07-025 on March 10, 1999.

Changes Other than Editing from Proposed to Adopted Version: Editing changes only.

Number of Sections Adopted in Order to Comply with Federal Statute: New 4, Amended 6, Repealed 3; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 4, Amended 6, Repealed 3.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 6, Repealed 3.

Effective Date of Rule: Thirty-one days after filing.

May 18, 1999

Marie Myerchin-Redifer, Manager
Rules and Policies Assistance Unit

Chapter 388-527 WAC

~~((MEDICAL OVERPAYMENT/REPAYMENT))~~ ~~ESTATE RECOVERY~~

NEW SECTION

WAC 388-527-2700 Purpose. The department will recover from the estate of a deceased client, the cost of medical care correctly paid on the client's behalf by the department as described by this chapter.

AMENDATORY SECTION (Amending Orders 3893 and 3893A, filed 9/6/95 and 11/29/95, effective 10/7/95 and 12/30/95)

WAC 388-527-2730 Estate recovery definitions. ((1)(a))) For estate recovery purposes((, "estate" includes)):

((i)) For a client who dies before July 1, 1995 all real and personal property and any other assets that pass upon the client's death:

(A) Under the client's will;
(B) By intestate succession pursuant to chapter 11.04 RCW; or

(C) Under chapter 11.62 RCW; or
((ii))) "Estate" means all real and personal property and any other assets that pass upon the client's death under the

client's will or by intestate succession pursuant to chapter 11.04 RCW or under chapter 11.62 RCW. An estate also includes:

((1)) For a client who ((dies)) died after June 30, 1995 ((all real and personal property and any other assets that pass upon the client's death:

(A) Under the client's will;

(B) By intestate succession pursuant to chapter 11.04 RCW; or

(C) Under chapter 11.62 RCW; and

((D))) and before July 27, 1997, nonprobate assets as defined by RCW 11.02.005, except property passing through a community property agreement((:-

((B))) ; or

((2)) For a client who died after July 26, 1997, nonprobate assets as defined by RCW 11.02.005.

The value of the estate shall be reduced by any valid liability against the deceased client's property at the time of death.

((2))) "Long-term care services" means the services administered directly or through contract by the aging and adult services administration of the department, including but not limited to nursing facility care and home and community services.

"State-funded long-term care" means the long-term care services that are paid only with state funds ((and do not include federal funds)).

((3))) "Medical assistance" means the federal aid medical care program provided ((to categorically needy persons as defined)) under Title XIX of the Federal Social Security Act.

NEW SECTION

WAC 388-527-2733 No liability for medical care. (1) The client's estate is not liable for services provided before July 26, 1987.

(2) The client's estate is not liable when the client died before July 1, 1994 and on the date of death there was:

(a) A surviving spouse; or

(b) A surviving child who was either:

(i) Under twenty-one years of age; or

(ii) Blind or disabled as defined under chapter 388-511 WAC.

(3) The estate of a frail elder or vulnerable adult under RCW 74.34.010 is not liable for the cost of adult protective services (APS) paid for only by state funds.

NEW SECTION

WAC 388-527-2737 Deferring recovery. When a client died after June 30, 1994 and received services after June 30, 1994, recovery from the estate is deferred until:

(1) The death of the surviving spouse, if any; and

(2) There is no surviving child who is:

(a) Under twenty-one years of age, or

(b) Blind or disabled as defined under chapter 388-511 WAC.

AMENDATORY SECTION (Amending Orders 3893 and 3893A, filed 9/6/95 and 11/29/95, effective 10/7/95 and 12/30/95)

WAC 388-527-2740 Age when recovery applies. The client's age and the date when services were received determines whether the client's estate is liable for the cost of medical care provided ((depends, in part, upon the client's age and when the services were received)). Subsection (1) of this section covers liability for medical assistance and subsection (2) covers liability for state-funded long-term care services. An estate may be liable under both subsections.

(1) For a client who on July 1, 1994 was:

(a) ((If a client was)) Age sixty-five or older ((on July 1, 1994)), the client's estate is liable for medical assistance that was subject to recovery and which was provided on and after the date the client became age sixty-five((-)) or after July 26, 1987, whichever is later;

(b) ((If the client was)) Age fifty-five through sixty-four years of age ((on July 1, 1994)), the client's estate is liable for medical assistance that was subject to recovery and which was provided on and after July 1, 1994((-)); or

(c) ((If a client was)) Under age fifty-five ((on July 1, 1994)), the client's estate is liable for medical assistance subject to recovery provided on and after the date the client became age fifty-five.

(2) The client's estate is liable for state-funded long-term care services provided on and after July 1, 1995 regardless of the client's age when the services were provided.

AMENDATORY SECTION (Amending Order 3893, filed 9/6/95, effective 10/7/95)

WAC 388-527-2742 Services subject to recovery. The medical services the client received and the dates when services were provided determines whether the client's estate is liable for the medical care provided ((depends, in part, upon what medical services the client received and the dates when services were provided)). Subsection (1) of this section covers liability for medical assistance and subsection (2) covers liability for state-funded long-term care services. An estate can be liable under both subsections.

(1) ((a)) The client's estate is liable for:

(a) All medical assistance services provided ((before July 1,)) from July 26, 1987 through June 30, 1994;

(b) The ((estate is liable for the)) following medical assistance services provided after June 30, 1994 and before July 1, 1995:

(i) Nursing facility services;

(ii) Home and community-based services; and

(iii) ((Related)) Hospital ((services)) and prescription drug services provided to a client while receiving nursing facility services or home and community-based services.

(c) The ((estate is liable for the)) following medical assistance services provided after June 30, 1995:

(i) Nursing facility services;

(ii) Home and community-based services;

(iii) Adult day health;

(iv) Medicaid personal care;

(v) Private duty nursing administered by the aging and adult services administration of the department; and

(vi) ((Related)) Hospital and prescription ((drugs services)) drug services provided to a client while receiving services described under (c)(i), (ii), (iii), (iv), or (v) of this subsection.

(2) The client's estate is liable for all state-funded long-term care services and related hospital and prescription drug services provided after June 30, 1995.

AMENDATORY SECTION (Amending Orders 3893 and 3893A, filed 9/6/95 and 11/29/95, effective 10/7/95 and 12/30/95)

WAC 388-527-2750 Waiver of recovery if undue hardship. ((The department shall waive)) Recovery is waived under this section when recovery would ((work)) cause an undue hardship, except as provided in subsection (3) of this section. This waiver is limited to the period during which undue hardship exists.

(1) Undue hardship exists when:

(a) The estate subject to adjustment or recovery is the sole income-producing asset of one or more of the heirs and income is limited; or

(b) Recovery would result in the impoverishment of one or more of the heirs; or

(c) Recovery would deprive an heir of shelter and the heir lacks the financial means to obtain and maintain alternative shelter.

(2) Undue hardship does not exist when:

(a) The adjustment or recovery of the client's cost of assistance would merely cause the client's family members inconvenience or restrict the family's lifestyle.

(b) The heir divests assets to qualify under the undue hardship provision.

(3) ((The department shall not waive recovery based on undue hardship)) When a deceased client's assets were disregarded in connection with a long-term care insurance policy or contract under chapter 48.85 RCW, recovery is not waived.

(4) ((A person who requests the department to waive recovery in whole or in part, and who suffers a loss because the request is not granted, may contest the department's decision in an adjudicative proceeding. The department's decision shall)) When a waiver is not granted, the department will provide notice to the person who requested the waiver. The denial of a waiver must state:

(a) The requirements ((for)) of an application for an adjudicative proceeding ((and state)) to contest the department's decision to deny the waiver; and

(b) Where assistance ((might)) may be obtained to make ((an)) such application. ((The proceeding shall be governed by chapters 34.05 RCW and 388-08 WAC and this section. If a provision in this section conflicts with a provision in chapter 388-08 WAC, the provision in this section governs.))

(5) A person may contest the department's decision in an adjudicative proceeding when that person requested the department waive recovery, and suffered a loss because that request was not granted.

(6) An application for an adjudicative proceeding under this section must:

- (a) Be in writing;
- (b) State the basis for contesting the department's denial of the request to waive recovery;

(c) Include a copy of the department's denial of the request to waive recovery;

(d) Be signed by the applicant ((and the state)) and include the applicant's address and telephone number;

(e) Be served within twenty-eight days of the date the applicant received the department's decision denying the request for a waiver. ((An application filed up to thirty days late may be treated as if timely filed)) If the applicant shows good cause ((for filing)), the application may be filed up to thirty days late; and

(f) Be served on the office of financial recovery ((in a manner which shows proof of receipt, such as personal service or certified mail, return receipt requested. The mailing address of the Office of Financial Recovery is: P.O. Box 9501, Olympia WA 98507-9501. The physical location of the Office of Financial Recovery is Capitol View Building, Second Floor, 712 Pear Street Southeast, Olympia, Washington)) (OFR) as described in WAC 388-527-2795.

(7) An adjudicative proceeding held under this section shall be governed by chapters 34.05 RCW and 388-08 WAC and this section. If a provision in this section conflicts with a provision in chapter 388-08 WAC, the provision in this section governs.

AMENDATORY SECTION (Amending Orders 3893 and 3893A, filed 9/6/95 and 11/29/95, effective 10/7/95 and 12/30/95)

WAC 388-527-2754 Assets not subject to recovery and other limits on recovery. (1) ((If a client died before July 25, 1993 with no surviving spouse or blind or disabled child, but with a surviving child,)) Recovery does not apply to the first fifty thousand dollars of the estate value at the time of death and ((recovery)) is limited to thirty-five percent of the remaining value of the estate for services the client:

(a) Received before July 25, 1993; and

(b) When the client died with:

(i) No surviving spouse;

(ii) No surviving child who is:

(A) Under twenty-one years of age;

(B) Blind; or

(C) Disabled.

(iii) A surviving child who is twenty-one years of age or older.

(2) ((If)) For services received after July 24, 1993, all services recoverable under WAC 388-527-2742 will be recovered, even from the first fifty thousand dollars of estate value that is exempt above, except as set forth in subsection (3) of this section.

(3) For a client ((died)) who received services after July 24, 1993 and before July 1, 1994, ((the department shall not seek recovery against)) the following property, up to a fair market value of two thousand dollars, is not recovered from the estate of the client:

(a) Family heirlooms,

(b) Collectibles,

(c) Antiques,

(d) Papers,

(e) Jewelry,

(f) Photos, and

(g) Other personal effects of the deceased client and to which a surviving child is entitled.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending Orders 3893 and 3893A, filed 9/6/95 and 11/29/95, effective 10/7/95 and 12/30/95)

WAC 388-527-2790 Filing a lien against real property. (1) ((The department shall file liens, seek adjustment, or otherwise effect recovery)) Liens are filed, adjustment sought, and other recoveries effected by the department for medical assistance or state-funded long-term care, or both, correctly paid on behalf of a client ((as required by)) consistent with 42 U.S.C. 1396p and chapters 43.20B RCW and 388-527 WAC.

(2) When the department seeks to recover from a client's estate the cost of medical assistance or state-funded long-term care, or both, provided to the client, prior to filing a lien against the deceased client's real property, ((the department shall provide)) notice shall be given to:

(a) The probate estate's personal representative, if any; or

(b) ((The decedent's surviving spouse, if any; or

(e))) Any other person ((having)) known to have title to the affected property.

(3) Prior to filing a lien against any of the deceased client's real property, ((the department shall provide ascertained persons having)) a person known to have title to the property ((notice)) shall be notified and have an opportunity for an adjudicative proceeding((. The department shall)) as follows:

(a) ((Serve upon ascertained persons having)) Any person known to have title to the property shall be served with a notice of intent to file lien, which shall state:

(i) The deceased client's name, social security number, if known, date of birth, and date of death;

(ii) The amount of medical assistance, or state-funded long-term care, or both, correctly paid on behalf of the deceased client the department seeks to recover;

(iii) The department's intent to file a lien against the deceased client's real property to recover the medical assistance or state-funded long-term care, or both, correctly paid on behalf of the deceased client;

(iv) The county in which the real property is located; and

(v) The right of the ((ascertained person having)) person known to have title to the property to contest the department's decision to file a lien by ((filing an application)) applying for an adjudicative proceeding with the office of financial recovery((; and)) (OFR).

(b) ((Provide)) An adjudicative proceeding ((to)) can determine whether:

(i) The amount of medical assistance or state-funded long-term care, or both, correctly paid on behalf of the

deceased client alleged by the department's notice of intent to file a lien is correct; and

(ii) The deceased client had ((any)) legal title to the real property at the time of the client's death.

(4) An application for an adjudicative proceeding must:

(a) Be in writing;

(b) State the basis for contesting the department's notice of intent to file the lien;

(c) Be signed by the applicant and state the applicant's address and telephone number;

(d) Be served on ((the office of financial recovery)) (OFR) within twenty-eight days of the date the applicant received the department's notice of intent to file the lien. An application filed up to thirty days late may be treated as timely filed if the applicant shows good cause for filing late; and

(e) Be served on ((the office of financial recovery in a manner in which shows proof of receipt, such as personal service or certified mail, return receipt requested. The mailing address of the Office of Financial Recovery is P.O. Box 9501, Olympia WA 98507-9501. The physical location of the Office of Financial Recovery is Capitol View Building, Second Floor, 712 Pear Street Southeast, Olympia, Washington)) OFR as described in WAC 388-527-2795.

(5) ((Upon receipt of an application for an adjudicative proceeding, the department shall provide notice of the proceeding to all other ascertained)) Persons ((having)) known to have title to the property shall be notified of the time and place of the adjudicative proceeding by the department when it receives an application for the same.

(6) An adjudicative proceeding under this section shall be governed by chapters 34.05 RCW and 388-08 WAC and this section. If a provision in this section conflicts with a provision in chapter 388-08 WAC, the provision in this section governs.

(7) If no ((ascertained person having title to the property files an application for)) known title holder requests an adjudicative proceeding ((within)), a lien shall be filed by the department twenty-eight days ((ef)) after the date ((the department served a)) that the notice of intent to file the lien((, the department shall file a lien. The department shall file a lien)) letter was mailed. The lien will be filed against the deceased client's real property ((for)) in the amount of the correctly paid medical assistance or state-funded long-term care, or both((, correctly paid on behalf of the deceased client alleged in the notice of intent to file lien)).

(8) If an adjudicative proceeding is conducted in accordance with this regulation, when the final agency decision is issued, the department will file a lien against the deceased client's real property for the amount of the correctly paid medical assistance or state-funded long-term care, or both, as established by that final agency decision.

NEW SECTION

WAC 388-527-2795 Serving notices on office of financial recovery (OFR). (1) Legal service must be by personal service or certified mail, return receipt requested, to OFR at the address described in this section.

(2) The mailing address of the office of financial recovery is:

Office of Financial Recovery

P.O. Box 9501

Olympia, WA 98507-9501.

(3) The physical location of the office of financial recovery is:

Blake Office Park

4450 10th Avenue Southeast

((Olympia)) Lacey, Washington.

Reviser's note: The unnecessary strike-through and underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-527-2735

Liability for medical care.

WAC 388-527-2752

Deferring recovery.

WAC 388-527-2753

No liability for medical care.

WSR 99-11-078

PERMANENT RULES

GAMBLING COMMISSION

[Order 371—Filed May 18, 1999, 3:55 p.m., effective July 1, 1999]

Date of Adoption: May 14, 1999.

Purpose: Changes were made to allow bingo operators to offer free games, such as the winners circle and pal games; reduce restrictions of gift certificates and promotional items; allow bingo operators to distribute coupons for free bingo card to customers as prizes, and allow bingo players to accrue points by playing bingo and redeem the points for prizes, such as a trip.

Citation of Existing Rules Affected by this Order: Amending WAC 230-20-115, 230-20-125, 230-20-242, and 230-20-230.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 99-08-094 on April 6, 1999, with a publication of April 21, 1999.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; **Federal Rules or Standards:** New 0, Amended 0, Repealed 0; **Recently Enacted State Statutes:** New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 1, Amended 4, Repealed 0; **Pilot Rule Making:** New 0, Amended 0, Repealed 0; **or Other Alternative Rule Making:** New 0, Amended 0, Repealed 0.

Effective Date of Rule: July 1, 1999.

May 19, 1999
Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending WSR 98-04-024, filed 1/28/98, effective 7/1/98)

WAC 230-20-115 Gift certificates—Requirements.

Gift certificates may be sold or issued as prizes during bingo games and such shall not be deemed sales of bingo cards for purposes of this title if licensees comply with the following restrictions:

(1) If sold, gift certificates shall be paid for in full at the time they are issued;

(2) Gross receipts from the sale of certificates shall be deposited separately into the gambling account no later than five banking days after receipt. The certificate numbers relating to the funds deposited shall be a part of the deposit record;

(3) For gift certificates awarded as prizes, the value of the certificate is recorded as a bingo prize on the daily bingo records for the sessions in which the certificate was issued. The certificate will be supported by a bingo prize receipt;

(4) Gift certificates shall be purchased from a commercial printer or licensed distributor and shall be prenumbered, consecutively issued, and have a predetermined value with the following information imprinted:

(a) The name of the organization issuing the certificate;

(b) The date issued and an expiration date no later than three months from the date issued for awarded certificates; and one year for sold certificates;

(c) The dollar value of the certificate; and

(d) Any conditions or contingencies related to redemption of the certificate;

(5) Gift certificates may only be awarded as prizes (~~on up to four occasions per year, and~~) under the following conditions:

(a) No prize shall include more than (~~forty~~) fifty dollars U.S. currency in gift certificates; and

(b) Redemption of gift certificates shall not be limited to a specific gambling activity. Provided, That certificates may be specific for bingo:

(6) Certificates shall only be redeemed for bingo cards, food, drink, merchandise, punch boards or pull-tabs upon the licensed premises from which it was issued;

(7) Certificates redeemed shall be applied against bingo activity and daily bingo records shall be modified in the cash reconciliation section of the approved record format to document the number and dollar value of certificates redeemed;

(8) A reconciliation of gift certificate inventory to certificates issued shall be performed on a monthly basis and will include the following control features:

(a) Purchase invoices will be retained for gift certificates and they will include the organization name, date of purchase, and beginning and ending certificate numbers;

(b) Redeemed certificates will be maintained with the corresponding daily sales records;

(c) Sold certificates not redeemed the expiration date shall be properly accounted for as a donation; (~~and~~)

(d) Certificates issued as prizes and not redeemed by the expiration date shall be accounted for by decreasing prizes paid expense by the value of the expired certificate and eliminating the corresponding liability. This adjusting entry shall be clearly documented in the licensee's monthly records; and

(e) A certificate log will be maintained and will include the following:

(i) Certificate number;

(ii) Certificate value;

(iii) Date of issue;

(iv) Expiration date;

(v) Date of redemption; and

(vi) If awarded as a prize, the session and date the prize is awarded.

AMENDATORY SECTION (Amending Order 364, filed 9/23/98, effective 1/1/99)

WAC 230-20-125 Discounts and promotional gifts—

Authorized—Limits. To increase profits from bingo games and enhance the entertainment aspect of such, licensees may conduct limited promotional activities. The following restrictions and procedures apply to promotional activities conducted as a part of bingo games:

(1) Licensees may promote bingo games by providing players discounts or gifts of nominal value on up to ((eight)) twelve occasions annually under the following conditions:

(a) Licensees may offer players discounts or reductions in the price to play bingo for purposes of evaluating the effectiveness of advertising of bingo games if:

(i) Discounts are only awarded to players that present a coupon that was issued by the licensee for a specific date and session;

(ii) Coupons shall not be available on the licensed premises: Provided, That this section does not prevent the sale of newspapers in which such coupons are printed on the licensed premises;

(iii) Coupons are printed in newspapers or similar media that are normally sold or delivered to an individual's residence;

(iv) The discount does not exceed fifty percent of the minimum cost to play or ((three)) five dollars, whichever is less;

(v) Any conditions or restrictions of the discount are disclosed in all advertisements offering the discount; and

(vi) Records required by subsection (2) of this section are maintained.

(b) Licensees may award promotional gifts to players if:

(i) Only merchandise gifts with a cost to the licensee of no more than ((three)) five dollars per gift are awarded;

(ii) The gifts are treated as prizes; and

(iii) A record is completed for each session setting out the criterion for selecting the recipients, the number of gifts, and total cost of the gifts.

(2) Licensees shall use the combination receiving method set forth in WAC 230-20-108 to record discounts awarded by this section. All discounts shall be recorded on the cash register receipt during the sales transaction;

(3) Records must be maintained as a part of the daily bingo records that provide full details of each discount or gift

awarded. All discounts must be reconciled to sales and cash on the "Bingo daily record-Cash control" record. Such records must include at least the following details:

- (a) Time and date of the activity;
- (b) Full description of the activity, including any conditions or restrictions;
- (c) A copy of all advertisements for such promotions; and

(d) All coupons or "frequent player" cards redeemed which shall include the name, address, and birth date of customers redeeming such.

(4) Licensees may provide special recognition gifts to players during the calendar week of their birthday. These gifts are excluded from the ((eight)) twelve occasion limitation if the following requirements are met:

- (a) Such gifts shall not exceed a value of ((three)) five dollars;
- (b) The recipient's name and date of birth are recorded; and
- (c) These gifts are treated as prizes and applicable records are maintained.

(5) Licensees may promote bingo games by offering incentives to players which are based on the customer participating in games for a specific number of sessions, playing during a session when promotional gifts are awarded to players, as authorized by subsection (1)(b) of this section, or for spending a specific dollar amount to play bingo over a period of time if:

(a) These "frequent player" incentives are redeemed only for promotional marketing gifts; or merchandise with a cost of twenty dollars or less;

(b) These incentives are accumulated in the form of "credits" or "points" that equate to a specified number of dollars spent by the player;

(c) The redemption value of points or credits awarded under this section does not exceed:

(i) ((One half of one)) Two percent of the total dollar amount spent by a player and recorded through the cash register method of recording bingo sales; or

(ii) ((Three)) Five dollars for each occasion that points or credits are awarded as promotional gifts under authority of subsection (1)(b) of this section;

(d) Such credits or points shall have no cash or partial redemption value;

(e) Players shall be informed of any expiration date of points or credits earned;

(f) The licensee shall develop a control system to account for points or credits issued, redeemed, or expired. Credits or points shall be controlled by issuing points at the time of cash register receipting method sale and recorded either with a computer-based tracking system or approved manual system. The following conditions apply to accumulation records:

(i) If cards are used, cards shall meet all of the requirements set forth for tickets used for receiving for bingo income in WAC 230-20-104 and the recording of credits on such cards shall be accomplished by means under control of the licensee, such as stamps, punches, employee initials, etc.; and

(ii) Computer-based records used to record points shall be approved by the commission staff.

NEW SECTION

WAC 230-02-145 Promotional marketing gifts. Promotional marketing gifts are merchandise items that either promote the game of bingo or a specific bingo licensee. Promotional marketing gifts include, but are not limited to, items used in connection with playing bingo or items with a licensee's name or logo permanently imprinted thereon.

AMENDATORY SECTION (Amending WSR 96-07-078, filed 3/19/96, effective 7/1/96)

WAC 230-20-230 Free games for winners—Restrictions. ((On only four occasions per year, a licensee may award free cards, or any opportunity to play in a bingo game, to a person as a prize for, or conditioned upon, winning a bingo game or games. Provided, those)) Bingo games conducted under the authority of a Class A, B or C license or games conducted without a license under RCW 9.46.0321 may award free games without restrictions on the number of occasions. ((The restrictions set forth in WAC 230-20-115 will apply when awarding gift certificates that may include free games for winners.)) Class D and above licensees may only award free bingo games as a prize when the restrictions and requirements set forth in WAC 230-20-115 are met.

AMENDATORY SECTION (Amending WSR 97-14-013, filed 6/20/97, effective 7/21/97)

WAC 230-20-242 Activities conducted as a part of bingo games—Authorization—Restrictions.

((What activities are authorized for consideration as part of a bingo game?))

(1) The following activities are authorized:

(a) Drawings:

(b) Creativity and originality contests. A competition to determine the best costume, flower arrangement, cake decorating, ugliest tie, or other activities requiring skill or original thought.

(c) "Good neighbor" schemes. Prizes are awarded based upon the seating location of a player(s) in regards to the winner of a bingo game.

(d) Second element of chance schemes. An additional chance is offered to win an increased minimum bingo game after the winner(s) of the game has been determined by calling numbers and symbols.

(e) Birthday bonus schemes. Prizes are awarded to a player who wins a bingo game during the same calendar week in which the player's birthday occurs.

What general restrictions apply to the awarding of prizes for these activities?

((2))) Bingo licensees may award prizes to winners of activities authorized by this section when such activities are conducted as a part of bingo games. Such activities shall be deemed to be bingo games if all players paying to participate

are allowed to compete equally and all prizes awarded are treated as bingo game prizes for purposes of compliance with WAC 230-20-059.

((What additional restrictions apply to drawings?))

((3)) (1) Drawings. Each licensee shall be allowed to award prizes that are determined by a random drawing of tickets or by other random selection methods involving the numbering system on such tickets if the requirements of WAC 230-20-105 are followed: Provided, That upon approval by commission staff, a licensee may use bingo cards in place of tickets if the requirements of WAC 230-20-107 are followed, and:

(a) All rules regarding these drawings, including requirements to qualify for participation, time and date of the drawing, and whether a player must be present to win, are clearly posted and distinctly explained to the players;

(b) Tickets or other facsimiles used to enter such drawings are awarded only to players purchasing cards to play in bingo games;

(c) Tickets, from which the winners of any such drawing are selected, shall not be accumulated for a period that is longer than thirty days. Drawings may be conducted using tickets that accumulate during any bingo occasion, week, or any other period that does not exceed thirty consecutive days;

(d) Players may only be awarded or otherwise receive tickets to participate in drawings at bingo games by meeting the following criteria:

(i) Pay an amount not to exceed one dollar per ticket. If a licensee elects to charge for entry into drawings, such drawings shall not be combined with other means of entry allowed by this subsection, and the gross gambling receipts, prizes, and expenses shall be recorded and reported as bingo activities: Provided, that if players are required to purchase tickets to enter the drawing, they shall not be required to be present to win if the drawing is not held at the same session as tickets are purchased;

(ii) Be a winner of a bingo game during the session;

(iii) Be a "good neighbor" winner, as defined by subsection ((5)) (3) of this section; or

(iv) Meet other specific and predetermined criterion that has been approved by the director;

(e) The criterion for granting tickets, and the number of tickets awarded during each session, shall be recorded in the daily bingo record for each session. All winning tickets and other records shall be maintained as a part of the daily bingo records.

((What additional restrictions apply to creativity and originality contests?))

((4)) (2) Creativity and originality contests. A bingo licensee may conduct contests in which players may demonstrate their creativity and originality skills on up to eight occasions annually. The following rules must be observed in conducting these contests:

(a) The total value of prizes shall not exceed five hundred dollars during any occasion;

(b) Only players who have paid to participate in bingo games during the current session may participate in the contest; and

(c) A record shall be completed for each contest setting out the criterion for selecting the winners, the number of participants in the contest, and all details required by WAC 230-08-080 and 230-20-102. Such records shall be maintained as a part of the daily bingo records.

((What additional restrictions apply to "good neighbor" schemes?))

((5)) (3) "Good neighbor" prize schemes. A licensee may award prizes based upon the seating location of a player or players in regards to a winner of a bingo game or other approved criteria. The following requirements must be observed prior to awarding "good neighbor" prizes:

(a) All rules regarding these prizes, including the amount to be awarded to each "good neighbor" or group of "good neighbors" and all requirements to qualify for a prize, must be clearly posted and distinctly explained to the players; and

(b) A record shall be completed setting out the criterion for awarding such prizes, the number of such prizes awarded during each session, and all details required by WAC 230-08-080 and 230-20-102. Such record shall be maintained as a part of the daily bingo records.

((What additional restrictions apply to second element of chance schemes?))

((6)) (4) Second element of chance schemes. Licensees may use these schemes to increase the minimum prize for a bingo game after the winner(s) of the game has been determined by calling numbers and symbols if:

(a) The schemes do not involve the use of gambling devices specifically prohibited by public policy or commission rules;

(b) A player's minimum odds of winning the highest prize is equal to or greater than one winner out of one hundred twenty-five chances or the probability of winning the highest prize is .008 or greater;

(c) The scheme does not require the player to risk any portion of a prize already won;

(d) Every possible outcome of the scheme provides the player with an additional prize;

(e) All rules regarding play of the game are clearly posted and distinctly explained to the players. At least the following information shall be disclosed:

(i) The players minimum odds of winning the highest prize;

(ii) How a winner is determined;

(iii) Any contingencies or special requirements that may affect the outcome;

(iv) The cash value of the highest prize available; and

(v) Any financial burden that must be borne by the winner, such as taxes or registration fees.

(f) All requirements of WAC 230-20-010 are met before cards are purchased; and

(g) The scheme and supporting records contain control factors necessary for commission audit.

((What additional restrictions apply to birthday bonus prizes?))

(7)) (5) Birthday bonus prizes. Licensees may offer birthday bonus prizes to players who win a bingo game subject to the following restrictions:

- (a) The maximum bonus prize is fifty dollars;
- (b) The player's birthday must be within the calendar week that the winning combination occurred and the bonus is paid;
- (c) A licensee may award only one birthday bonus to any player during any calendar year;
- (d) In addition to all requirements of WAC 230-20-102, the prize receipt for such prizes must include:
 - (i) The address of the winner;
 - (ii) The player's date of birth; and
 - (iii) The type of identification provided by the player to verify the winner's date of birth.

WSR 99-11-087
PERMANENT RULES
DEPARTMENT OF AGRICULTURE

[Filed May 19, 1999, 10:02 a.m.]

Date of Adoption: May 19, 1999.

Purpose: The portions of the current noxious weed control rules proposed for expedited repeal set forth procedures for the State Noxious Weed Control Board to implement a noxious weeds grant program. This program is authorized in statute (RCW 17.10.250), but it has not been funded or active since 1993. The "noxious weed account fund" no longer exists, and the State Noxious Weed Control Board has no plans to request its reinstatement. At the March 16, 1999, meeting of the State Noxious Weed Control Board, the board advised Mary Toohey, the Washington State Department of Agriculture representative, unanimously that these WAC sections should be repealed, as they are obsolete.

Citation of Existing Rules Affected by this Order: Repealing WAC 16-752-115, 16-752-120, 16-752-125, 16-752-130, 16-752-135, 16-752-140, 16-752-145, 16-752-146, 16-752-147, 16-752-150, 16-752-155, 16-752-160, 16-752-165, and 16-752-170.

Statutory Authority for Adoption: RCW 17.10.250.

Adopted under preproposal statement of inquiry filed as WSR 99-07-124 on March 24, 1999.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 14.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 14.

Effective Date of Rule: Thirty-one days after filing.

May 19, 1999

Jim Jesernig

Director

WSR 99-11-106
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed May 19, 1999, 11:25 a.m.]

Date of Adoption: May 19, 1999.

Purpose: To implement the provisions of RCW 82.08.02567 and 82.12.02567 which provide retail sales and use tax exemptions for sales of or charges made for machinery and equipment used directly in generating electricity using the wind, landfill gas, or solar energy as the principal source of power.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-263 Wind, landfill gas, and solar energy electric generating facilities sales and use tax exemption.

Statutory Authority for Adoption: RCW 82.32.300.

Adopted under notice filed as WSR 99-06-028 on February 23, 1999.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

May 19, 1999

Russell W. Brubaker

Assistant Director

Legislation and Policy Division

AMENDATORY SECTION (Amending WSR 97-03-027, filed 1/8/97, effective 2/8/97)

WAC 458-20-263 Wind ((energy)), landfill gas, and solar energy electric generating facilities sales and use tax exemption. (1) **Introduction.** ((Effective July 1, 1996, chapter 166, Laws of 1996, (HB 2290) provides a retail sales tax exemption for sales of or charges made for:

(a) Machinery and equipment used directly in generating electricity using the wind or solar energy as the principal source of power; or

(b) Labor and services for installing the machinery and equipment.

The sales tax exemption applies if the purchaser develops with the machinery, equipment, labor, and services a facility capable of generating not less than two hundred kilowatts of electricity using the wind or solar energy as the principal source of power. The law provides a corresponding use tax exemption for the use of machinery and equipment used directly in generating not less than two hundred kilowatts of electricity using the wind or solar as the principal source of power.

(2) Expiration. The sales and use tax exemptions expire on June 30, 2005.

(3)) This rule explains the retail sales and use tax exemptions provided by RCW 82.08.02567 and 82.12.02567 for the sale and/or use of machinery and equipment used directly in generating electricity using wind, landfill gas, or solar energy as the principal source of power. These exemptions expire on June 30, 2005.

(2) Definitions. The following definitions apply to this section:

(a) "Machinery and equipment" means industrial fixtures, devices, and support facilities that are integral and necessary to the generation of electricity using the wind, landfill gas, or solar energy as the principal source of power.

(i) "Machinery and equipment," where solar energy is the principal source of ((energy)) power, includes, but is not limited to: Solar modules; power conditioning equipment; batteries; transformers; power poles; power lines; and connectors to the utility grid system.

(ii) "Machinery and equipment," where wind is the principal source of power, includes, but is not limited to: ((Wind)) Turbines; blades; generators; towers and tower pads; substations; guy wires and ground stays; control buildings; power conditioning equipment; anemometers; recording meters; transmitters; power poles; power lines; and connectors to the utility grid system.

(iii) "Machinery and equipment," where landfill gas is the principal source of power, includes, but is not limited to: Turbines; blades; blowers; burners; heat exchangers; generators; towers and tower pads; substations; guy wires and ground stays; control buildings; pipe; valves; power conditioning equipment; pressure control equipment; recording meters; transmitters; power poles; power lines; and connectors to the utility grid system.

(iv) "Machinery and equipment" does not include: The utility grid system and any tangible personal property used to connect electricity directly to consumers; hand tools; property with a useful life of less than one year; repair parts required to restore machinery and equipment to normal working order; replacement parts that do not increase productivity, improve efficiency, or extend the useful life of the machinery and equipment; buildings; or building fixtures that are not integral and necessary to the generation of electricity that are permanently affixed to and become a physical part of a building.

(b) "Used directly" means the machinery and equipment provides any part of the process that captures the energy of the wind, landfill gas, or solar, converts that energy to elec-

tricity, and transforms or transmits that electricity for entry into electric transmission and distribution systems.

(c) "Installation charges" means sales of or charges made for labor and services rendered in respect to installing the machinery and equipment.

(i) Labor and services to install machinery and equipment includes both the charges for labor and charges for the rental of equipment with an operator.

(ii) Labor and services to install machinery and equipment does not include the rental of tangible personal property used by the ((purchaser)) buyer to install machinery and equipment. See WAC 458-20-211.

((4)) (3) Retail sales tax exemption. The retail sales tax does not apply to the purchase ((of or charges for machinery and equipment used directly in generating electricity using the wind or solar energy as the principal source of power or labor and services for installing the machinery and equipment.)) or lease of machinery and equipment used directly in generating electricity using wind, landfill gas, or solar energy as the principal power source, but only if the purchaser develops with such machinery and equipment a facility capable of generating not less than two hundred kilowatts of electricity. Retail sales tax also does not apply to installation charges for this machinery and equipment. RCW 82.08.02567.

(a) The exemption is effective July 1, 1996, for machinery and equipment using wind and solar energy, and April 3, 1998, for machinery and equipment using landfill gas (chapter 309, Laws of 1998).

(b) Prior approval is not required from the department of revenue in order to claim the retail sales tax exemption. However, the ((purchaser)) buyer is required to provide the seller with an exemption certificate. ((Both the purchaser and)) The seller must retain a copy of the certificate to document the exemption.

((a)) The exemption certificate may be ((in the form shown below, or may be in any other form that contains substantially the following information and language)):

(i) Issued for each purchase; or

(ii) In blanket form certifying all future purchases as being exempt from sales and use tax. Blanket forms must be renewed every four years.

(c) This certificate should be in substantially the following form:

**Sales and Use Tax Exemption Certificate
for Wind, Landfill Gas, or Solar Powered
Electrical Generation Facilities**

The ((purchaser)) buyer (user) certifies that the items listed below are machinery and equipment, or are labor and services rendered to install the machinery and equipment, used directly in generating electricity using the wind, landfill gas, or solar energy as the principal source of power at a facility capable of generating not less than two hundred kilowatts of electricity, and that such purchase is exempt from the retail sales tax under RCW 82.08.02567. This certificate is given with full knowledge of, and subject to, the legally prescribed penalties for fraud and tax evasion.

((Purchaser)) Buyer (User) UBI/Registration #
 Name of ((Purchaser)) Buyer (User)
 Address of ((Purchaser)) Buyer (User)
 Seller UBA/Registration #
 Name of Seller Date
 Item or category of items
 ((Authorized agent for Purchaser))
Buyer or Buyer's Agent
 (Print)
 Authorized signature Title
 Date

((b) ~~In lieu of providing the certificate to the department each time a purchase is made, the purchaser may provide the department with an annual summary of exempt purchases by January 31 of the year following the calendar year in which the items were purchased. The annual summary must provide the same information required in (a) of this subsection.~~

((5)) (4) Use tax. ((The use tax does not apply to the use of machinery and equipment used directly in generating not less than two hundred kilowatts of electricity using the wind or solar energy as the principle source of power. The user of exempt machinery and equipment is required to file an annual summary of exempt machinery and equipment similar to that described for the sales tax exemption.

~~Instead of an annual summary the user may elect to file with the department of revenue an exemption certificate, similar to the retail sales tax exemption certificate described in subsection (4) of this section. If so, the certificate must be filed within sixty days of the first use of the machinery and equipment in this state.~~

((6)) The law provides a corresponding use tax exemption for the use of machinery and equipment used directly in generating not less than two hundred kilowatts of electricity using wind, landfill gas, or solar energy as the principal source of power. RCW 82.12.02567. The use tax exemption is effective July 1, 1996, machinery and equipment, using wind and solar energy and April 3, 1998, for machinery and equipment using landfill gas (chapter 309, Laws of 1998).

((5) Time of sale. The existing rules pertaining to time and place of sale and when tax liability arises apply for purposes of whether a given transaction occurred on or after the effective date of the law((;)). The effective date with respect to machinery and equipment used to generate electricity using wind or solar energy is July 1, 1996, ((for purposes of the sales and use tax exemption)) and, machinery and equipment using landfill gas, April 3, 1998. See WAC 458-20-103, 458-20-178, and 458-20-197.

((a) In the case of an outright purchase of goods, the sale takes place when the goods are delivered to the ((purchaser)) buyer in this state. Thus, machinery and equipment delivered to the ((purchaser)) buyer on or after July 1, 1996, or April 3, 1998, respectively, can qualify for exemption, regardless of when the order for the goods was placed.

((b) If machinery and equipment is acquired without payment of retail sales tax, use tax is due at the time of first use. Thus, machinery and equipment for electricity generating

facilities using wind or solar energy which is first put to use after July 1, 1996, can qualify for the exemption. See WAC 458-20-178.

((c) In the case of leases or rentals of tangible personal property, liability for sales tax arises as of the time the lease or rental payment falls due. Thus, in the case of leased machinery and equipment using landfill gas, rental payments that fall due on or after ((July 1, 1996)) April 3, 1998, can qualify for exemption, regardless of when the lease was initiated.

WSR 99-11-107

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed May 19, 1999, 11:26 a.m.]

Date of Adoption: May 19, 1999.

Purpose: To explain the application of the B&O and retail sales taxes to sales of meals, and to provide tax-reporting information to persons providing meals without a specific charge and meals to employees.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-119 Sales of meals.

Statutory Authority for Adoption: RCW 82.32.300.

Adopted under notice filed as WSR 99-06-027 on February 23, 1999.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Effective Date of Rule: Thirty-one days after filing.

May 19, 1999

Russell W. Brubaker

Assistant Director

Legislation and Policy Division

AMENDATORY SECTION (Amending WSR 93-23-019, filed 11/8/93, effective 12/9/93)

WAC 458-20-119 Sales of meals. (1) **Introduction.** This ((seetion)) rule explains Washington's B&O and retail sales tax applications to the sales of meals. This ((seetion)) rule also gives tax reporting information to persons who provide meals without a specific charge. It explains how meals furnished to employees are taxed. Persons in the business of operating restaurants should also refer to WAC 458-20-124

and persons operating hotels, motels, ((boarding houses,)) or similar businesses should refer to WAC 458-20-166.

Retail sellers who are required by law to have a food and beverage service worker's permit under RCW 69.06.010 are subject to the retailing B&O tax and must collect and remit retail sales tax on sales of prepared food products, unless a specific exemption applies. For additional information regarding sales by persons required to have a food and beverage worker's permit, refer to WAC 458-20-244 (Food products).

(2) Business and occupation tax. The sales of meals and the providing of meals as a part of services rendered are subject to tax as follows:

(a) **Retailing.** The retailing B&O tax applies as follows.

(i) **Restaurants, cafeterias and other eating places.**

Sales of meals to consumers by restaurants, cafeterias, clubs, and other eating places are subject to the retailing tax. (See WAC 458-20-124-Restaurants, etc.)

(ii) **Caterers.** Sales of meals and prepared food by caterers are subject to the retailing tax when sold to consumers. "Caterer" means a person who provides, prepares and serves meals for immediate consumption at a location selected by the customer. The tax liability is the same whether the meals are prepared at the customer's site or the caterer's site. The retailing tax also applies when caterers prepare and serve meals using ingredients provided by the customer. Persons providing a food service for others should refer to the subsection below entitled "Food service contractors."((:))

(iii) **Hotels, motels, bed and breakfast facilities, resort lodges and other establishments offering meals and transient lodging.** Sales of meals by hotels, motels, and other persons who provide transient lodging are subject to the retailing tax.

(iv) **Boarding houses, American plan hotels, and other establishments offering meals and nontransient lodging.** Sales of meals by boarding houses and other such places are subject to retailing tax.

(A) Except for guest ranches and summer camps, when a lump sum is charged to non-transients for providing both lodging and meals, the fair selling price of the meals is subject to the retailing tax. Unless accounts are kept showing the fair selling price, the tax will be computed upon double the cost of the meals served. This cost includes the price paid for food and drinks served, the cost of preparing and serving meals, and all other incidental costs, including an appropriate portion of overhead expenses.

(B) It will be presumed that guest ranches and summer camps are not making sales of meals when a lump sum is charged for the furnishing of lodging, and meals are included.

(v) **Railroad, Pullman car, ship, airplane, or other transportation company diners.** Sales of meals by a railroad, Pullman car, ship, airplane, or other transportation company served at fixed locations in this state, or served upon the carrier itself while within this state, are subject to the retailing tax.

Where no specific charge is made for meals separate and apart from the transportation charge, the entire amount charged is deemed a charge for transportation and the retailing tax does not apply to any part of the charge.

(vi) Hospitals, nursing homes, and other similar institutions. The serving of meals by hospitals, nursing homes, sanitariums and similar institutions to patients as a part of the service rendered in the course of business by such institutions is not a sale at retail. However, many hospitals and similar institutions have cafeterias or restaurants through which meals are sold for cash or credit to doctors, visitors, nurses, and other employees. Some of these institutions have agreements where the employees are paid a fixed wage in payment for services rendered and are provided meals at no charge. Under those circumstances, all sales of meals to such persons are subject to the retailing tax, including the value of meals provided at no charge to employees. Refer to the subsection below entitled "Meals furnished to employees."

(vii) School, college, or university dining rooms. Public schools, high schools, colleges, universities, or private schools operating lunch rooms, cafeterias, dining rooms, or snack bars for the exclusive purpose of providing students and faculty with meals or prepared foods are not considered to be engaged in the business of making retail sales of meals. However, if guests are permitted to dine with students or faculty in such areas, the sales of meals to the ((quests)) guests are retail sales.

(A) Unless the eating area is situated so that it is available only to students and faculty, the lunch room, cafeteria, dining room, or snack bar must have a posted sign stating that the area is only open to students and faculty. In the absence of such a sign, there will be a presumption that the facility is not exclusively for the use of students and faculty. The actual policy in practice in these areas must be consistent with the posted policy.

(B) If the cafeteria, lunch room, dining room, or snack bar is generally open to the public, all sales of meals, including meals sold to students, are considered retail sales.

(C) For some educational institutions, the meals provided to students is considered to be part of the charge for tuition and may not be subject to the B&O tax. Public schools, high schools, colleges, universities, and private schools should refer to WAC 458-20-167 to determine whether the retailing B&O tax applies to the sales of meals described above. (See also WAC 458-20-189 for a discussion of B&O tax for schools operated by the state.)

(viii) Fraternities and sororities. Fraternities, sororities, and other groups of individuals who reside in one place and jointly share the expenses of the household including expense of meals are not considered to be making sales when meals are furnished to members.

(b) Wholesaling-other. Persons making sales of prepared meals to persons who will be reselling the meals are subject to the wholesaling-other tax classification. Sellers must obtain resale certificates from their customers to support the resale nature of any transaction. (See WAC 458-20-102.)

(c) Service and other business activities. Private schools, which do not meet the definition of "educational institutions,"((,)) operating lunch rooms, cafeterias, or dining rooms for the exclusive purpose of providing meals to students and faculty are subject to the service and other business activities B&O tax on the charges to students and faculty for

meals. (See WAC 458-20-167 for definitions of the terms "private school" and "educational institution."((--))) Persons managing a food service operation for a private school should refer to the subsection below entitled "Food service contractors."

(3) Retail sales tax. The sales of meals, upon which the retailing tax applies under the provisions ((set forth)) above, are generally subject to tax under the retail sales tax classification. However, a retail sales tax exemption is available for the following sales of meals:

(a) Prepared meals sold under a state-administered nutrition program for the aged as provided for in the Older Americans Act (Public Law 95-478 Title III) and RCW 74.38.040(6).

(b) Prepared meals sold to or for senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW. However, this exemption does not apply to purchases of prepared meals by not-for-profit organizations, such as hospitals, which provide the meals to patients as a part of the services they render.

(c) Prepared meals sold to the federal government. (See WAC 458-20-190.) However, meals sold to federal employees are taxable, even if the federal employee will be reimbursed for the cost of the meals by the federal government.

(4) Deferred sales or use tax. If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the deferred sales or use tax directly to the department.

(a) Purchases of dishes, kitchen utensils, linens, and items which do not become an ingredient of the meal, are subject to retail sales tax.

(b) Retail sales tax or use tax applies to purchases of equipment, repairs, appliances, and construction.

(c) The retail sales or use tax does not apply to purchases of food or beverage products which are ingredients of meals being sold at retail or wholesale.

(d) Purchases of food products and prepared meals by persons who are not in the business of selling meals at retail or wholesale are subject to the retail sales tax. However, certain food products are statutorily exempt of retail sales or use tax. (See WAC 458-20-244.)

(e) Private schools, educational institutions, nursing homes, and similar institutions who are not making sales of meals at retail or wholesale are required to pay retail sales tax on all purchases of paper plates, paper cups, paper napkins, toothpicks, or any other articles which are furnished to customers, the first actual use of which renders such articles unfit for further use. However, purchases of such items by restaurants and similar businesses which are making retail or wholesale sales of meals are not subject to the retail sales or use tax.

(f) Transportation companies not segregating their charges for meals, and transporting persons for hire in interstate commerce, generally will be liable to their ((vendors)) sellers for retail sales tax upon the purchase of the food supplies or prepared meals to the extent that the meals will be served to passengers in Washington. Certain food items are statutorily exempt of retail sales or use tax. (See WAC 458-20-244.)

(5) ((Sales by persons having a food and beverage worker's permit. Retail vendors who are required by law to

have a food and beverage service worker's permit under RCW 69.06.010 are subject to the retailing and retail sales taxes on sales of prepared food products. (See RCW 82.08.0293.) This includes, but is not limited to, sales of sandwiches prepared or chicken cooked on the premises, deli trays, home delivered pizzas, etc. However, sales of the following food products are exempt of sales tax even though sold by a person required to have a food and beverage service worker's permit:

(a) Raw meat prepared by persons who slaughter animals, including fish and fowl, or dress or wrap slaughtered raw meat such as fish dealers, butchers, or meat wrappers;

(b) Meat and cheese sliced and/or wrapped, in any quantity determined by the buyer, sold by vendors such as meat markets, delicatessens, and grocery stores;

(c) Baked goods sold by bakeries which sell no food products other than baked goods, including bakeries located in grocery stores; and

(d) Bulk food products sold from bins or barrels, including but not limited to, flour, fruits, vegetables, sugar, salt, candy, chips and cereals.

((6))) Food service contractors. The term "food service contractor" means a person who operates a food service at a kitchen, cafeteria, dining room, or similar facility owned by an institution or business. Food service contractors may manage the food service operation on behalf of the institution or business, or may actually make sales of meals or prepared foods.

(a) Sales of meals. Food service contractors who sell meals or prepared foods to consumers are subject to the retailing B&O and retail sales taxes upon their gross proceeds of sales. For example, the operation of a cafeteria which provides meals to employees of a manufacturing or financial business is generally a retail activity. The food service contractor is considered to be making retail sales of meals, whether payment for the meal is made by the employees or the business, unless the business itself is reselling the meals to the employees.

In all cases where the meals are prepared at off-site facilities not owned by the institution or business, the food service contractor is considered to be making sales of meals and the retailing B&O and retail sales taxes apply to the gross proceeds of sale, or gross income for sales to consumers.

(b) Food service management. ((For periods prior to)) Effective July 1, ((1993)) 1998, the gross proceeds derived from the management of a food service operation are subject to the service and other business activities B&O tax. ((On and after)) (Chapter 7, Laws of 1997.) For the period of July 1, 1993, through June 30, 1998, these proceeds ((are)) were subject to the selected business services classification of the B&O tax. (((Chapter 25, Laws of Washington 1993, 1st Special Session.))) These tax reporting provisions apply whether the staff actually preparing the meals or prepared foods are employed by the institution or business hiring the food service contractor, or by the food service contractor itself. If the food service contractor merely manages the food service operation on behalf of an institution or business, that institution or business is considered to be selling meals or providing the meals as a part of the services the institution or business renders to its customers. These institutions and businesses

should refer to the subsections (2) and (3) above to determine their B&O and retail sales tax liabilities.

Food service management includes, but is not limited to, the following activities:

(i) Food service contractors operating a cafeteria or similar facility which provides meals and prepared food for employees and/or guests of a business, but only where the business owning the facility is the one actually selling the meals to its employees.

(ii) Food service contractors managing and/or operating a cafeteria, lunch room, or similar facility for the exclusive use of students or faculty at an educational institution or private school. The educational institution or private school provides these meals to the students and faculty as a part of its educational services. The food service contractor is managing a food service operation on behalf of the institution, and is not making retail sales of meals to the students, faculty, or institution. Sales of meals or prepared foods to ((guests)) guests in such areas are, however, subject to the retailing B&O and retail sales taxes. (Refer also to the subsection above entitled "School, college, or university dining rooms.")

(iii) Food service contractors managing and/or operating the dietary facilities of a hospital, nursing home, or similar institution, for the purpose of providing meals or prepared foods to patients or residents thereof. These meals are provided to the patients or residents by the hospital, nursing home, or similar institution as a part of the services rendered by the institution. The food service contractor is managing a food service operation on behalf of the institution, and is not considered to be making retail sales of meals to the patients, residents, or institution. Meals sold to doctors, nurses, visitors, and other employees through a cafeteria or similar facility are, however, subject to the retailing B&O and retail sales taxes. (Refer also to the subsection above entitled "Hospitals, nursing homes, and other similar institutions.")

(c) The following examples explain the application of the B&O and retail sales taxes to typical situations involving food service contractors managing a food service operation. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all ((of the)) facts and circumstances.

(i) GC Inc. is a food service contractor managing and operating an on-site cafeteria for B College. This cafeteria is operated for the exclusive use of students and faculty. ((However,)) Guests of students or faculty members, however, are allowed to use the facilities. All monies collected in the cafeteria are retained by B College. College B pays GC's direct costs for managing and operating the cafeteria, including the costs of the unprepared food products, employee salaries, and overhead expenses. GC also receives a management fee.

GC Inc. is managing a food service operation. The measure of tax is the gross proceeds received from B College. GC Inc. may not claim a deduction on account of cost of materials, salaries, or any other expense. For periods prior to July 1, ((1993)) 1998, the gross proceeds are subject to the ((service and other business activities)) selected business services B&O tax. On and after July 1, ((1993)) 1998, these proceeds are subject to the ((selected business)) service and other activities B&O tax classification. B College is considered to be making retail sales of meals to the guests((. B College))

and must collect and remit retail sales taxes on the gross proceeds of these sales ((derived therefrom)). B College should refer to WAC 458-20-167 to determine whether the retailing B&O tax applies.

(ii) DF Food Service contracts with Hospital A to manage and operate Hospital A's dietary and cafeteria facilities. DF is to receive a per meal fee for meals provided to Hospital A's patients. DF Food Service retains all proceeds for sales of meals to physicians, nurses, and visitors in the cafeteria.

The gross proceeds received from Hospital A in regards to the meals provided to the patients is derived from the management of a food service operation. For periods prior to July 1, ((1993)) 1998, these proceeds are subject to the ((service and other business activities)) selected business services B&O tax. On and after July 1, ((1993)) 1998, these proceeds are subject to the ((selected business)) service and other activities B&O tax classification. ((However,)) DF, however, is making retail sales of meals to physicians, nurses, and visitors in the cafeteria. DF Food Service must pay retailing B&O, and collect and remit retail sales tax, on the gross proceeds derived from the cafeteria sales.

((7)) (6) **Meals furnished to employees.** Sales of meals to employees are sales at retail and subject to the retailing B&O and retail sales taxes. This is true whether individual meals are sold, whether a flat charge is made, or whether meals are furnished as a part of the compensation for services rendered.

(a) Where a specific and reasonable charge is made to the employee, the measure of the tax is the selling price.

(b) Where no specific charge is made, the measure of the tax will be the average cost per meal served to each employee, based upon the actual cost of the food.

(c) It is often impracticable to collect the retail sales tax from employees on such sales. The employer may, in lieu of collecting such tax from employees, pay the tax directly to the department of revenue.

(d) Where meals furnished to employees are not recorded as sales, the tax due shall be presumed to apply according to the following formula for determining meal count:

(i) Those employees working shifts up to five hours, one meal; and

(ii) employees working shifts of more than five hours, two meals.

((8)) (7) **Sales of meals, beverages, and food at prices including sales tax.** Persons who advertise and/or sell meals, alcoholic or other beverages, or any kind of food products upon which retail sales tax is due should refer to WAC 458-20-244 (Food products), WAC 458-20-124 (Restaurants, etc.), and WAC 458-20-107 (Advertised prices including sales tax). The taxability of persons operating class H licensed restaurants is specifically addressed in WAC 458-20-124.

((9)) (8) **Gratuities.** Tips or gratuities representing donations or gifts by customers under circumstances which are clearly voluntary are not part of the selling price subject to tax. However, mandatory additions to the price by the seller, whether labeled service charges, tips, gratuities, or otherwise must be included in the selling price and are sub-

ject to both the retailing classification of the B&O tax and the retail sales tax.

((10)) (9) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all ((of the)) facts and circumstances.

(a) ABC Hospital operates a cafeteria and sells meals to physicians and to persons who are visiting patients in the hospital. Meals are also provided to its employees at no charge. However, there is no accounting for the number of meals consumed by the employees. Payroll records do record the number of hours worked. On average, employees working shifts of up to five hours consume one meal while those working shifts of more than five hours consume two meals.

ABC Hospital is subject to retailing and retail sales taxes on the gross proceeds derived from the sales of meals to physicians and visitors. The retailing and retail sales taxes also apply to the value of ((the)) meals consumed by ABC's employees. The value subject to tax is determined by the average cost of meals consumed by the employees, based upon the actual cost of the food items, multiplied by the number of meals as determined through a review of the payroll records. While the presumption is that employees working shifts of up to five hours consume one meal with those working shifts of five to eight hours consuming two, this presumption may be rebutted under particular circumstances.

(b) X operates a boarding house and provides lodging and meals to ten non-transient residents. Each resident is charged a lump sum to cover both lodging and meals with no accounting for a fair selling price for the meals. X is making retail sales of meals to its residents. Retailing and retail sales taxes are due on the value of the meals served. This value must be computed as double the cost of the meal, including the cost of the food and drink ingredients, costs of meal preparation, and other costs associated with the meal preparation such as overhead expenses.

(c) Y Motor Inn contracts with Z Company to provide catering services for a function to be held at the motor inn. During discussions concerning the services to be provided, Z Company is informed that a 15% gratuity is generally recommended. Z Company negotiates the gratuity percentage to 10% and signs a catering contract stating that the agreed gratuity will be added. The gratuity charged to Z Company is subject to both the retailing B&O and retail sales taxes. This is not a voluntary gratuity since it is required to be paid as a condition of the contract. Gratuities are not part of the selling price only when they are strictly voluntary.

WSR 99-11-001**EMERGENCY RULES****DEPARTMENT OF
FISH AND WILDLIFE**

[Order 99-41—Filed May 5, 1999, 2:53 p.m., effective May 5, 1999, 6:00 p.m.]

Date of Adoption: May 5, 1999.

Purpose: Subsistence fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-32-05500U; and amending WAC 220-32-055.

Statutory Authority for Adoption: RCW 75.08.080.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The treaty tribes have reached the harvest allocation for spring Chinook in the mainstem Columbia River. This rule is consistent with the 1996-98 Management Agreement for 1999 fisheries, and conforms state and tribal rules. This action mirrors a tribal implemented closure. There is insufficient time to promulgate permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; **Federal Rules or Standards:** New 0, Amended 0, Repealed 0; or **Recently Enacted State Statutes:** New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; **Pilot Rule Making:** New 0, Amended 0, Repealed 0; or **Other Alternative Rule Making:** New 0, Amended 0, Repealed 0.

Effective Date of Rule: May 5, 1999, 6:00 p.m.

May 5, 1999

Evan Jacoby
for Jeff P. Koenings
Director

NEW SECTION

WAC 220-32-05500U Indian subsistence fishing
Notwithstanding the provisions of WAC 220-32-055 effective 6:00 p.m. May 5, 1999 through midnight May 31, 1999, it is unlawful for individuals possessing treaty fishing rights pursuant to the Yakama Treaty, the Warm Springs Treaty, the Umatilla Treaty and the Nez Perce Treaty to take, fish for, or possess salmon for subsistence purposes in those waters of the Columbia River as defined in WAC 220-32-055 (2)a.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. June 1, 1999:

WAC 220-32-05500U Indian subsistence fishing.

WSR 99-11-002**EMERGENCY RULES****DEPARTMENT OF
FISH AND WILDLIFE**

[Order 99-55—Filed May 6, 1999, 3:17 p.m., effective May 17, 1999, 4:00 a.m.]

Date of Adoption: May 4, 1999.

Purpose: Commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-03000M; and amending WAC 220-33-030.

Statutory Authority for Adoption: RCW 75.08.080.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This regulation sets the standard shad commercial fishery in the lower Columbia River. Harvestable numbers of shad are expected in 1999. This rule is consistent with actions of the Columbia River Compact hearing of January 28, 1999, and is consistent with requirements of the ESA. There is insufficient time to promulgate permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; **Federal Rules or Standards:** New 0, Amended 0, Repealed 0; or **Recently Enacted State Statutes:** New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; **Pilot Rule Making:** New 0, Amended 0, Repealed 0; or **Other Alternative Rule Making:** New 0, Amended 0, Repealed 0.

Effective Date of Rule: May 17, 1999, 4:00 a.m.

May 4, 1999

Larry W. Peck
for Jeff P. Koenings
Director

NEW SECTION

WAC 220-33-03000M Commercial shad—Columbia River Notwithstanding the provisions of WAC 220-33-030, it is unlawful to take, fish for or possess shad taken for commercial purposes except as provided for in this section:

FISHING PERIODS

- 1) Shad Area 2S is open daily, 3 p.m. to 10 p.m. from:
May 24 - May 28, 1999
June 1 - June 4, 1999
June 7 - June 11, 1999
June 14 - June 18, 1999
June 21 - June 25, 1999
- 2) The Camas-Washougal Reef Area is open weekly, 4 a.m. Mondays to midnight Fridays from:
May 17 - May 21, 1999
May 24 - May 28, 1999
June 1 - June 4, 1999
June 7 - June 11, 1999
June 14 - June 18, 1999
June 21 - June 25, 1999
June 28 - June 29, 1999

Gear: Gill net gear may be used to fish for shad as provided in WAC 220-33-030(1), except that in Area 2S the net may not exceed 150 fathoms in length nor 40 meshes in depth and that in the Camas-Washougal Reef Area the webbing of the gear may be constructed of mesh having a breaking strength of less than 30 pounds.

Allowable Sale During the fishing periods provided in this section, only shad may be kept and sold. All salmonids, walleye and sturgeon must be immediately returned to the water and those alive must be released unharmed.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. June 30, 1999:

WAC 220-33-03000M Commercial shad—Columbia River.

WSR 99-11-013
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 99-61—Filed May 7, 1999, 2:21 p.m., effective May 11, 1999, 8:00 a.m.]

Date of Adoption: May 6, 1999.

Purpose: Commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000L and 220-52-04600Q; and amending WAC 220-52-040 and 220-52-046.

Statutory Authority for Adoption: RCW 75.08.080.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or

general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: There is a harvestable surplus of crab in the area opened by this regulation. A reduced pot limit is necessary to avoid exceeding the allocation. The state may not authorize commercial shellfish harvests absent agreed planning or compliance with a process. Agreed plans with applicable tribes have been entered as required by federal court order. Such plans have the effect of a federal court order. 898 F. Supp. 1453, 1466, 3.1. Pursuant to RCW 34.04.350 [34.05.350], the need to comply with such federal court orders in the form of allocative management plans constitutes an emergency that requires bypassing the time periods inherent in permanent rule making.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; **Federal Rules or Standards:** New 0, Amended 0, Repealed 0; or **Recently Enacted State Statutes:** New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; **Pilot Rule Making:** New 0, Amended 0, Repealed 0; or **Other Alternative Rule Making:** New 0, Amended 0, Repealed 0.

Effective Date of Rule: May 11, 1999, 8:00 a.m.

May 6, 1999

J. P. Koenings

Director

NEW SECTION**WAC 220-52-04000L Commercial crab fishery—25**

Pot per license limit for May 11 opening Notwithstanding the provisions of WAC 220-52-046, effective 8:00 a.m. May 11, 1999 until further notice, it is unlawful for any person to take or fish for crab for commercial purposes in the Puget Sound licensing district using, operating, or controlling any more than an aggregate total of 25 shellfish pots or ring nets. This limit shall apply to each license. However, this shall not preclude a person holding two Puget Sound crab licenses from designating and using the licenses from one vessel as authorized by RCW 75.28.048(4).

NEW SECTION**WAC 220-52-04600Q Commercial crab fishery—36**

Hour limited opening on May 11. Notwithstanding the provisions of WAC 220-52-046, effective 8:00 a.m. May 11, 1999 until 8:00 p.m. May 12, it is lawful to fish for Dungeness crab for commercial purposes in Puget Sound in the following areas:

(1) All waters of Marine Fish/Shellfish Management and Catch Reporting Area 24A south of a line projected true east

and west from the southern tip of Goat Island, with the exception of those waters within a line projected from Rocky Point northeast to the red number 2 buoy, thence to Brown Point.

(2) All waters of Marine Fish/Shellfish Management and Catch Reporting Area 24B, with the exception of those waters inside a line projected from Priest Point to the five-meter tower between Gedney Island and Priest Point, thence northwesterly on a line between the five-meter tower and Barnum Point to the intersection with a line projected true west from Kayak Point, thence east to shore, and those waters north of a line projected true west from Kayak Point, and south and west of a line from Kayak Point to Barnum Point.

(3) Waters of Marine Fish/Shellfish Management and Catch Reporting Area 24C south of a line from East Point on Whidbey Island to Lowell Point on Camano Island, with the exception of those waters inshore of the 400 foot depth contour within an area bounded by parallel lines projected north-easterly from Sandy Point and the entrance to the marina at Langley.

(4) Waters of Marine Fish/Shellfish Management and Catch Reporting Area 26A north of a line from Picnic Point to Possession Point on Whidbey Island, with the exception of those waters south and east of a line projected from the 3A buoy at the Snohomish River mouth to the outermost tip of the ferry dock at Mukilteo, and those waters within a line from the green number 1 buoy at Scatchet Head to the green number 1 buoy at Possession Point thence following the 200 foot contour to a point due east from the Glendale Dock.

REPEALER

The following sections of the Washington Administrative Code are repealed effective 8:01 p.m. May 12, 1999:

WAC 220-52-04600Q	Commercial crab fishery— 36 Hour limited opening on May 11
WAC 220-52-04000L	Commercial crab fishery— 25 Pot per license limit for May 11 opening

WSR 99-11-014
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 99-46—Filed May 7, 1999, 2:22 p.m., effective May 8, 1999, 8:00 a.m.]

Date of Adoption: May 7, 1999.

Purpose: Personal use rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 220-56-33000P; and amending WAC 220-56-330.

Statutory Authority for Adoption: RCW 75.08.080.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is

necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Crab testfishing results indicate there is a harvestable surplus of hardshell crab in the area to be opened. There is insufficient time to promulgate permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: May 8, 1999, 8:00 a.m.

May 7, 1999

J. P. Koenings

Director

NEW SECTION

**WAC 220-56-33000Q Personal use crab fishery—
Pot fishery opening for portion of Area 8-2.** Notwithstanding the provisions of WAC 220-56-330, effective 8:00 a.m. May 8, 1999 until further notice:

(1) It is lawful to fish for Dungeness crab taken for personal use using shellfish pot gear from those waters of Catch Record Card Area 8-1 south of a line projected true east and west from the southern tip of Goat Island.

(2) It is lawful to fish for Dungeness crab taken for personal use using shellfish pot gear from all waters of Catch Record Card Area 8-2, and the portion of Catch Record Card Area 9 north and east of a line from Picnic Point to Possession Point on Whidbey Island.

REPEALER

The following section of the Washington Administrative Code is repealed effective 8:00 a.m. May 8, 1999:

WAC 220-56-33000P	Personal use crab fishery— Allocation/softshell clo- sures. (99-28)
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WSR 99-11-021**EMERGENCY RULES****DEPARTMENT OF****FISH AND WILDLIFE**

[Order 99-62—Filed May 11, 1999, 4:28 p.m.]

Date of Adoption: May 11, 1999.

Purpose: Personal use rules.

Citation of Existing Rules Affected by this Order:
Amending WAC 220-52-046.

Statutory Authority for Adoption: RCW 75.08.080.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: There are harvestable crab in the area opened by this rule. This opening is in agreement with affected tribes under *United States v. Washington*, which has the effect of a federal court order. 898 F. Supp. 1453, 1466, 3.1. The need to comply with such an order constitutes an emergency that requires bypassing the time periods inherent in permanent rule making.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: Immediately.

May 11, 1999

Larry W. Peck

for Jeff P. Koenings

Director

NEW SECTION**WAC 220-52-04600R Commercial crab fishery—36****Hour limited opening on May 11.** Notwithstanding the provisions of WAC 220-52-046, effective 8:00 a.m. May 11, 1999 until 8:00 p.m. May 12, it is lawful to fish for Dungeness crab for commercial purposes in Puget Sound in the following areas:

(1) All waters of Marine Fish/Shellfish Management and Catch Reporting Area 24A south of a line projected true east and west from the southern tip of Goat Island, with the exception of those waters within a line projected from Rocky Point northeast to the red number 2 buoy, thence to Brown Point.

(2) All waters of Marine Fish/Shellfish Management and Catch Reporting Area 24B, with the exception of those waters inside a line projected from Priest Point to the

five-meter tower between Gedney Island and Priest Point, thence northwesterly on a line between the five-meter tower and Barnum Point to the intersection with a line projected true west from Kayak Point, thence east to shore, and those waters north of a line projected true west from Kayak Point, and south and west of a line from Kayak Point to Barnum Point.

(3) Waters of Marine Fish/Shellfish Management and Catch Reporting Area 24C, with the exception of those waters inshore of the 400 foot depth contour within an area bounded by parallel lines projected northeasterly from Sandy Point and the entrance to the marina at Langley.

(4) Waters of Marine Fish/Shellfish Management and Catch Reporting Area 26A north of a line from Picnic Point to Possession Point on Whidbey Island, with the exception of those waters south and east of a line projected from the 3A buoy at the Snohomish River mouth to the outermost tip of the ferry dock at Mukilteo, and those waters within a line from the green number 1 buoy at Scatchet Head to the green number 1 buoy at Possession Point thence following the 200 foot contour to a point due east from the Glendale Dock.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-04600Q

Commercial crab fishery—
36 Hour limited opening on
May 11.

The following section of the Washington Administrative Code is repealed effective 8:01 p.m. May 12, 1999:

WAC 220-52-04600R

Commercial crab fishery—
36 Hour limited opening on
May 11.**WSR 99-11-038****EMERGENCY RULES****DEPARTMENT OF****FISH AND WILDLIFE**

[Order 99-47—Filed May 14, 1999, 8:16 a.m.]

Date of Adoption: May 13, 1999.

Purpose: Personal use rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-56-35000Y and 220-56-38000R; and amending WAC 220-56-350 and 220-56-380.

Statutory Authority for Adoption: RCW 75.08.080.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: These regulations are necessary to conserve the resource and provide recreational harvest

WSR 99-11-042
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 99-65—Filed May 14, 1999, 2:40 p.m., effective May 18, 1999, 8:00 a.m.]

opportunity. There is insufficient time to promulgate permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: Immediately.

May 13, 1999

Larry W. Peck
 for Jeff P. Koenings
 Director

NEW SECTION

WAC 220-56-35000Z Clams other than razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-350, effective immediately until further notice, it is unlawful to harvest or possess clams, cockles, or mussels taken for personal use from the following public tidelands during the closed periods herein, and lawful to harvest only during the open periods specified herein:

- (1) Dosewallips State Park - **Open** until further notice.
- (2) Potlatch DNR - **Closed** May 31, 1999.
- (3) Potlatch State Park - **Closed** May 31, 1999.

NEW SECTION

WAC 220-56-38000S Oysters—Areas and seasons. Notwithstanding the provisions of WAC 220-56-380, effective immediately until further notice, it is unlawful to harvest or possess oysters taken for personal use from the following public tidelands except as provided below:

- (1) Potlatch State Park - **Open** until further notice.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-56-35000Y

Clams other than razor clams—Areas and seasons. (99-34)

WAC 220-56-38000R

Oysters—Areas and seasons. (99-34)

WSR 99-11-042

EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 99-65—Filed May 14, 1999, 2:40 p.m., effective May 18, 1999, 8:00 a.m.]

Date of Adoption: May 17 [14], 1999.

Purpose: Commercial fishing regulations.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000M and 220-52-04600S; and amending WAC 220-52-040 and 220-52-046.

Statutory Authority for Adoption: RCW 75.08.080.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: There is a harvestable surplus of crab in the area opened by this regulation. A reduced pot limit is necessary to avoid exceeding the allocation. The state may not authorize commercial shellfish harvests absent agreed planning or compliance with a process. Agreed plans with applicable tribes have been entered as required by federal court order. Such plans have the effect of a federal court order. 898 F. Supp. 1453, 1466, 3.1. Pursuant to RCW 34.04.350 [34.05.350], the need to comply with such federal court orders in the form of allocative management plans constitutes an emergency that requires bypassing the time periods inherent in permanent rule making.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 2, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: May 18, 1999, 8:00 a.m.

May 14, 1999

Larry W. Peck

for Jeff P. Koenings
 Director

NEW SECTION

WAC 220-52-04000M Commercial crab fishery—25 Pot per license limit for May 18 opening Notwithstanding the provisions of WAC 220-52-046, effective 8:00 a.m. May 18, 1999 until further notice, it is unlawful for any person to take or fish for crab for commercial purposes in the Puget

Sound licensing district using, operating, or controlling any more than an aggregate total of 25 shellfish pots or ring nets. This limit shall apply to each license. However, this shall not preclude a person holding two Puget Sound crab licenses from designating and using the licenses from one vessel as authorized by RCW 75.28.048(4).

NEW SECTION

WAC 220-52-04600S Commercial crab fishery—32 Hour limited opening on May 18. Notwithstanding the provisions of WAC 220-52-046, effective 8:00 a.m. May 18, 1999 until 4:00 p.m. May 19, it is lawful to fish for Dungeness crab for commercial purposes in Puget Sound in the following areas:

(1) All waters of Marine Fish/Shellfish Management and Catch Reporting Area 24A south of a line projected true east and west from the southern tip of Goat Island, with the exception of those waters within a line projected from Rocky Point northeast to the red number 2 buoy, thence to Brown Point.

(2) All waters of Marine Fish/Shellfish Management and Catch Reporting Area 24B, with the exception of those waters inside a line projected from Priest Point to the five-meter tower between Gedney Island and Priest Point, thence northwesterly on a line between the five-meter tower and Barnum Point to the intersection with a line projected true west from Kayak Point, thence east to shore, and those waters north of a line projected true west from Kayak Point, and south and west of a line from Kayak Point to Barnum Point.

(3) Waters of Marine Fish/Shellfish Management and Catch Reporting Area 24C, with the exception of those waters inshore of the 400 foot depth contour within an area bounded by parallel lines projected northeasterly from Sandy Point and the entrance to the marina at Langley.

(4) Waters of Marine Fish/Shellfish Management and Catch Reporting Area 26A north of a line from Picnic Point to Possession Point on Whidbey Island, with the exception of those waters south and east of a line projected from the 3A buoy at the Snohomish River mouth to the outermost tip of the ferry dock at Mukilteo, and those waters within a line from the green number 1 buoy at Scatchet Head to the green number 1 buoy at Possession Point thence following the 200 foot contour to a point due east from the Glendale Dock.

REPEALER

The following section of the Washington Administrative Code is repealed effective 4:01 p.m. May 19, 1999:

WAC 220-52-04600S

Commercial crab fishery—
32 Hour limited opening on
May 18.

WAC 220-52-04000M

Commercial crab fishery—
25 Pot per license limit for
May 18 opening.

WSR 99-11-043
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 99-63—Filed May 14, 1999, 2:41 p.m., effective May 16, 1999, 12:01 a.m.]

Date of Adoption: May 14, 1999.

Purpose: Personal use rules.

Citation of Existing Rules Affected by this Order:
Repealing WAC 220-56-25500H; and amending WAC 220-56-255.

Statutory Authority for Adoption: RCW 75.08.080.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: This rule is needed to maintain consistency between the state and federal regulations for halibut fishing. There is insufficient time to promulgate permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: May 16, 1999, 12:01 a.m.

May 14, 1999

Larry W. Peck

for Jeff P. Koenings

Director

NEW SECTION

WAC 220-56-25500I Halibut—Seasons—Daily limits. Notwithstanding the provisions of WAC 220-56-235, effective 12:01 a.m. May 16, 1999 until further notice it is unlawful to fish for or possess halibut taken for personal use except as provided for in this section:

(1) Catch Record Card Area 1: Open until further notice. Minimum size 32 inches in length. The daily limit is the first halibut 32 inches in length or greater brought aboard the vessel.

(2) Catch Record Card Area 2:

(a) Waters south of the Queets River, north of 47°N and east of 124°40'W: Open until further notice.

(b) All other open waters in Area 2: Open until further notice, except closed 12:01 a.m. each Friday through 11:59 p.m. each Saturday.

(3) Catch Record Card Area 3 and waters of Catch Record Card Area 4 west of the Bonilla-Tatoosh line: Open until further notice, except closed 12:01 a.m. each Sunday through 11:59 p.m. each Monday and in the closed waters of a rectangle defined by the following four corners: 48°18'N, 125°11'W; 48°18'N, 124°59'W; 48°04'N, 125°11'W; 48°04'N, 124°59'W

(4) Catch Record Card Area 4 east of the Bonilla-Tatoosh line and Catch Record Card Areas 5 through 13: Open May 27 through July 12, 1999, except closed 12:01 a.m. each Tuesday through 11:59 p.m. each Wednesday.

REPEALER

The following section of the Washington Administration Code is repealed effective 11:59 p.m. May 15, 1999:

WAC 220-56-25500H Halibut—Seasons—Daily limits. (99-58)

WSR 99-11-044
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 99-42—Filed May 14, 1999, 2:42 p.m., effective June 5, 1999, 8:00 a.m.]

Date of Adoption: May 14, 1999.

Purpose: Personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900H; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.040.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This rule is needed to regulate a juvenile fishing derby on planted trout. Following conclusion of the derby the planted trout are available to all fishers. There is insufficient time to promulgate permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: June 5, 1999, 8:00 a.m.

May 14, 1999

Larry W. Peck

for Jeff P. Koenings

Director

NEW SECTION

WAC 232-28-61900H Bridgeport fishing derby. Notwithstanding the provisions of WAC 232-28-619, effective 8:00 a.m. June 5 through 8:00 p.m. June 6, 1999, in those waters of the Columbia River inside the blocked-off portion of the City of Bridgeport Marina:

(1) Open to juvenile fishers only from 8:00 a.m. through 4:00 p.m. June 5. Trout: Limit four fish during the fishery provided for in this section. No minimum size.

(2) Open to all fishers from 4:01 p.m. June 5 through 8:00 p.m. June 6, 1999. Trout: No daily or possession limit during the fishery provided for in this subsection. No minimum size.

REPEALER

The following section of the Washington Administrative Code is repealed effective 8:01 p.m. June 6, 1999:

WAC 232-28-61900H Bridgeport fishing derby.

WSR 99-11-079
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 99-49—Filed May 19, 1999, 8:54 a.m., effective May 20, 1999, 12:01 a.m.]

Date of Adoption: May 18, 1999.

Purpose: Personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-57-32100C; and amending WAC 220-57-321.

Statutory Authority for Adoption: RCW 75.08.080.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The spring chinook escapement goal for the Little White Salmon National Fish Hatchery has been achieved. This fishery will harvest surplus hatchery fish. No spawning habitat exists for spring chinook in this river. This regulation is opening an area that is currently closed under permanent rules. There is insufficient time to promulgate permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or
Recently Enacted State Statutes: New 0, Amended 0,
Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Effective Date of Rule: May 20, 1999, 12:01 a.m.

May 18, 1999

J. P. Koenings
Director

NEW SECTION

WAC 220-57-32100C Little White Salmon River (Drano Lake) Notwithstanding the provisions of WAC 220-57-321, effective 12:01 a.m. May 20 through 11:59 p.m. May 31, 1999, special daily limit of 2 chinook salmon greater than 12 inches in length in those waters of the Little White Salmon River (Drano Lake) from boundary markers on the riverbank downstream below the Little White Salmon National Fish Hatchery to the mouth. Night closure and non-buoyant lure restriction.

REPEALER

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. May 31, 1999:

WAC 220-57-32100C Little White Salmon River (Drano Lake)

WSR 99-11-008**NOTICE OF PUBLIC MEETINGS****EDMONDS COMMUNITY COLLEGE**

[Memorandum—May 3, 1999]

EDMONDS COMMUNITY COLLEGE BOARD OF TRUSTEES**NOTICE OF SPECIAL MEETINGS TO MEDIA/OTHER**

May 10, 1999*

Meeting with Congressman Jay Inslee, EdCC President's Cabinet, EdCC Foundation Board, and other EdCC staff, Edmonds Floral Conference Center, 201 4th Avenue North, Edmonds, WA 8:30 - 9:15 a.m.

May 13-15, 1999*

Trustees Association of Community and Technical Colleges Spring Convention, Ocean Shores, Washington.

May 20, 1999

Edmonds Community College Board of Trustees Regular Board Meeting. EdCC, Snohomish Hall, Cascade Conference Room 304A, 20000 68th Avenue West, Lynnwood, WA, 4:00 p.m.

May 21, 1999*

Edmonds Community College Benefit Gala, "A Night in the Garden," Edmonds Floral Conference Center, 201 4th Avenue North, Edmonds, WA, 5:15 p.m.

May 25, 1999*

Small business Awards Luncheon, EdCC, Triton Union Building, 20000 68th Avenue West, Lynnwood, WA, 11:30 a.m.

May 27, 1999*

Graduates of Color Celebration, EdCC, Triton Union Building 202, 20000 68th Avenue West, Lynnwood, WA, 6:00-8:00 p.m.

*This event is being scheduled as a special meeting, which is a study session where no action will be taken.

WSR 99-11-009**NOTICE OF PUBLIC MEETINGS****DEPARTMENT OF CORRECTIONS**

[Memorandum—May 7, 1999]

Special Meeting Notice

The Correctional Industries board of directors will hold a special meeting on May 11, 1999, by teleconference call beginning at 9:00 a.m. This meeting is called to review the class I partnership application from Concrete Works.

Contact Sheila Pearson, (360) 753-5861.

WSR 99-11-010**NOTICE OF PUBLIC MEETINGS****WASHINGTON STATE LIBRARY**

(Library Commission)

[Memorandum—May 6, 1999]

The Washington State Library Commission is scheduled to meet as indicated below:

DATE: Tuesday, May 18, 1999

TIME: 8:00 a.m. to 10:00 a.m.

LOCATION: Legislative Building Conference Room A

For additional information, you can contact (360) 753-2914, or on the Internet at Pdavis@statelib.com.

WSR 99-11-011**RULES COORDINATOR****WASHINGTON STATE LIBRARY**

[Filed May 7, 1999, 1:51 p.m.]

Effective immediately, Patricia Davis, confidential secretary, will serve as the rules coordinator of the Washington State Library. She can be reached at (360) 753-2914, or on the Internet at Pdavis@statelib.com.

The mailing address for Patricia is Washington State Library, P.O. Box 42460, Olympia, WA 98504-2460.

If you have any questions, please feel free to call (360) 753-2915.

Nancy Zussy
State Librarian

WSR 99-11-012**NOTICE OF PUBLIC MEETINGS****BELLINGHAM TECHNICAL COLLEGE**

[Memorandum—May 7, 1999]

The regularly scheduled meeting of the board of trustees of Bellingham Technical College will be held on Thursday, May 20, 1999, 9-11 a.m., in the College Services Building Board Room on the Bellingham Technical College campus. Call 738-3105 extension 334 for information.

WSR 99-11-015**PROCLAMATION****OFFICE OF THE GOVERNOR**

[April 30, 1999]

WHEREAS, in accordance with Article II, Section 12 (Amendment 68) of the Washington State Constitution, the Legislature adjourned its 1999 regular session on April 25, 1999, the 105th day of the session; and

WHEREAS, substantial work remains to be done with respect to education, including school safety, teacher testing, and professional teaching standards; and

WHEREAS, substantial work also remains to be done with respect to salmon recovery efforts, and a biennial transportation budget for the state was not passed;

NOW, THEREFORE, I Gary Locke, Governor of the State of Washington, by virtue of the authority vested in my by Article II, Section 12 (Amendment 68) and Article III, Section 7 of the Washington State Constitution, do hereby convene the Washington State Legislature in Special Session in the Capitol at Olympia at nine o'clock a.m. on Monday, May 17, 1999 for a period of not more than one week for the purpose of enacting legislation as described above.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the State of Washington to be affixed at Olympia this 30th day of April, A.D., nineteen hundred and ninety-nine.

Gary Locke

Governor of Washington

BY THE GOVERNOR:

Ralph Munro

Secretary of State

Reviser's note: The typographical error in the above material occurred in the copy filed by the Office of the Governor and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 99-11-019
RULES OF COURT
STATE SUPREME COURT
[May 6, 1999]

IN THE MATTER OF THE ADOPTION) ORDER
OF THE AMENDMENTS TO SAR 4, SAR) NO. 25700-A-651
6, SAR 8, SAR 9, SAR 10, SAR 11, SAR)
12, SAR 13, SAR 15, SAR 16, SAR 18,)
SAR 21, SAR 22; AND RAP 15.2)

The Court having recommended the adoption of the proposed amendments to SAR 4, SAR 6, SAR 8, SAR 9, SAR 10, SAR 11, SAR 12, SAR 13, SAR 15, SAR 16, SAR 18, SAR 21, SAR 22; and RAP 15.2, and having determined that the proposed amendments will aid in the prompt and orderly administration of justice and that an emergency exists which necessitates an early adoption;

Now, therefore, it is hereby

ORDERED:

- (a) That the amendments as attached hereto are adopted.
- (b) That pursuant to the emergency provisions of GR 9(i), the amendments will be published expeditiously and become effective upon publication.

DATED at Olympia, Washington this 6th day of May, 1999.

Guy, C.J.

Alexander, J.

Smith, J.

Madsen, J.

Johnson, J.

Sanders, J.

Talmadge, J.

Ireland, J.

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 99-12 issue of the Register.

WSR 99-11-020
RULES OF COURT
STATE SUPREME COURT
[May 6, 1999]

IN THE MATTER OF THE ADOPTION) ORDER
OF THE AMENDMENT TO APR 15 PRO-) NO. 25700-A-652
CEDURAL RULE 13)

The Washington State Bar Association having recommended the adoption of the proposed amendment to APR 15 Procedural Rule 13, and the Court having determined that the proposed amendment will aid in the prompt and orderly administration of justice and that an emergency exists which necessitates an early adoption;

Now, therefore, it is hereby

ORDERED:

- (a) That the amendment as attached hereto is adopted.

Individuals requiring reasonable accommodation may request written materials in alternative formats, sign language interpreters, physical accessibility accommodations, or other reasonable accommodation, by contacting Karen Pendleton at (360) 753-5989, hearing and speech impaired persons can call 1-800-833-6384.

(b) That pursuant to the emergency provisions of GR 9(i), the amendment is effective immediately.

DATED at Olympia, Washington this 6th day of May, 1999.

Richard P. Guy, C.J.

Alexander, J.

Smith, J.

Madsen, J.

Johnson, J.

Sanders, J.

Talmadge, J.

Ireland, J.

WASHINGTON STATE BAR ASSOCIATION

LAWYERS' FUND FOR CLIENT PROTECTION (APR 15) PROCEDURAL RULES

(Adopted by the Washington Supreme Court July 18, 1995; last amended February 11, 1997)

(with proposed amendment to Rule 13)

RULE 1. PURPOSE

A. The purpose of these rules is to establish procedures pursuant to Rule 15 of the Admission to Practice Rules, to maintain and administer a Lawyers' Fund for Client Protection established as a trust by the Washington State Bar Association (WSBA), in order to promote public confidence in the administration of justice and the integrity of the legal profession.

B. Funds accruing and appropriated to the Fund may be used for the purpose of relieving or mitigating a pecuniary loss sustained by any client by reason of the dishonesty of, or failure to account for money or property entrusted to, any member of the WSBA in connection with the member's practice of law or while acting as a fiduciary in a matter related to the member's practice of law. Such funds may also, through the Fund, be used to relieve or mitigate like losses sustained by persons by reason of similar acts of an individual who was at one time a member of the WSBA but who was at the time of the act complained of under a court ordered suspension.

C. The Fund shall not be used for the purpose of relieving any pecuniary loss resulting from an attorney's negligent performance of services.

RULE 2. ESTABLISHMENT OF THE FUND.

A. Trustees. Pursuant to APR 15, the members of the Board of Governors of the WSBA will serve during their terms of office as Trustees (Trustees) for the Fund to hold funds assessed by the Supreme Court for the purposes of the Fund. The WSBA President will serve as President of the Trustees.

B. Funding. The Trustees may recommend to the Supreme Court that it order an annual assessment of all active members of the WSBA in an amount recommended by the Trustees to be held by them in trust for the purposes of the Fund.

C. Enforcement. Any active member failing to pay any annual assessment on or before the date set for payment by the Supreme Court shall, after 60 days written notice sent to his or her last known business address as shown in the records of the WSBA, be ordered suspended from the practice of law until the assessment is paid.

RULE 3. LAWYERS' FUND FOR CLIENT PROTECTION COMMITTEE

A. Membership. The Lawyers' Fund for Client Protection Committee shall consist of 11 lawyers and 2 nonlawyers appointed by the Trustees for terms not exceeding 3 years each.

B. Vacancies. Vacancies on the Committee shall be filled by appointment of the Trustees.

C. Officers. The Trustees shall appoint a chairperson of the Committee for a term of one-year or until a successor is appointed. The secretary of the Committee shall be a staff member of the WSBA assigned to the Committee by the Executive Director of the WSBA.

D. Meetings. The Committee shall meet not less than once per year upon call of the chairperson, or at the request of the staff member of the WSBA, who shall not be entitled to vote on Committee matters.

E. Quorum. A majority of the Committee members, excluding the secretary, shall constitute a quorum.

F. Record of Meetings. The secretary shall maintain minutes of the Committee deliberations and recommendations.

G. Authority and Duties of Committee. The Committee shall have the power and authority to:

(1) Consider claims for reimbursement of pecuniary loss and make a report and recommendation regarding payment or nonpayment on any claim to the Trustees.

(2) Provide a full report of its activities annually to the Supreme Court and the Trustees and to make other reports and to publicize its activities as the Court or Trustees may deem advisable.

H. Conflict of Interest.

(1) A Committee member who has or has had a lawyer/client relationship or financial relationship with an applicant or lawyer who is the subject of an application shall not participate in the investigation or deliberation of an application involving that applicant or lawyer.

(2) A Committee member with a past or present relationship, other than that as provided in section (1), with an applicant or lawyer who is the subject of an application, shall disclose such relationship to the Committee and, if the Committee deems it appropriate, that member shall not participate in any action relating to that application.

RULE 4. APPLICATIONS FOR PAYMENT

A. Application Form. All applications for payment through the Lawyers' Fund for Client Protection shall be made by submitting an application on a form approved by the Committee, and shall include all information requested on the form.

B. Disciplinary Complaints. Any person who has filed a disciplinary complaint with the WSBA alleging a loss occasioned by the dishonest conduct of a lawyer should be pro-

vided with a Lawyers' Fund for Client Protection application form and given information about the Fund.

RULE 5. ELIGIBLE CLAIMS

A. Eligibility. To be eligible for payment from the Fund, the loss must be caused by the dishonest conduct of a lawyer or the failure to account for money or property entrusted to a lawyer in connection with the lawyer's practice of law, or while acting as a fiduciary in a matter related to the lawyer's practice of law.

B. Time Limitations. An application must be made within three years from the date on which discovery of the loss was made or reasonably should have been made by the applicant, and in no event more than three years from the date the lawyer dies, is disbarred, is disciplined for misappropriation of funds, or is criminally convicted for matters relating to the applicant's loss, provided that the Trustees in their discretion may waive any limitations period for excusable neglect or other good cause.

C. Dishonest Conduct. As used in these rules, "dishonest conduct" or "dishonesty" means wrongful acts committed by a lawyer in the nature of theft or embezzlement of money or the wrongful taking or conversion of money, property or other thing of value, including but not limited to refusal to refund unearned fees as required by Rule 1.15 of the Rules of Professional Conduct.

D. Excluded Losses. Except as provided by Section E of this Rule, the following losses shall not be reimbursable:

(1) Losses incurred by partners and associates of the lawyer causing the loss;

(2) Losses covered by any bond, surety agreement, or insurance contract to the extent covered thereby, including any loss to which any bonding agent, surety, or insurer is subrogated, to the extent of that subrogated interest;

(3) Losses incurred by any financial institution which are recoverable under a "banker's blanket bond" or similar commonly available insurance or surety contract;

(4) Losses incurred by any business entity controlled by the lawyer or any person or entity described in Rule 5 D (1), (2) or (3);

(5) Losses incurred by any governmental entity or agency;

(6) Consequential damages, such as lost interest, or attorney's fees or other costs incurred in seeking recovery of a loss.

E. Special and Unusual Circumstances. In cases of special and unusual circumstances, the Committee may, in its discretion, consider an application which would otherwise be excluded by reason of the procedural requirements of these rules.

F. Unjust Enrichment. In cases where it appears that there will be unjust enrichment, or that the applicant contributed to the loss, the Committee may, in its discretion, recommend the denial of the application.

RULE 6. PROCEDURES

A. Ineligibility. Whenever it appears that an application is not eligible for reimbursement pursuant to Rule 5, the applicant shall be advised of the reasons why the application may not be eligible for reimbursement.

B. Investigation and Report. The WSBA staff member assigned to the Committee shall conduct an investigation regarding any application. The investigation may be coordinated with any disciplinary investigation regarding the lawyer. The staff member shall report to the Committee and make a recommendation to the Committee.

C. Notification of Lawyer. The lawyer, or his or her representative, regarding whom an application is made shall be notified of the application and provided a copy of it, and shall be requested to respond within 20 days. A copy of these Rules shall be provided to the lawyer or representative.

D. Testimony. The Committee may request that testimony be presented to complete the record. Upon request, the lawyer or applicant, or their representatives, may be given an opportunity to be heard at the discretion of the Committee.

E. Finding of Dishonest Conduct. The Committee may make a finding of dishonest conduct for purposes of considering an application. Such a determination is not a finding of dishonest conduct for purposes of professional discipline.

F. Evidence and Burden of Proof. Consideration of an application need not be conducted according to technical rules relating to evidence, procedure and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence commonly accepted by reasonably prudent persons in the conduct of their affairs. The applicant shall have the burden of establishing eligibility for reimbursement by clear preponderance of the evidence.

G. Pending Disciplinary Proceedings. Unless the Trustees otherwise direct, no application shall be acted upon during the pendency of a disciplinary proceeding or investigation involving the same act or conduct that is alleged in the claim.

H. Exhaustion of Remedies. The Committee may direct an applicant to seek reimbursement of a loss before making recommendation to the Trustees on an application. This may include, but is not limited to, the following:

(1) File a claim with the lawyer's insurance carrier;

(2) File a claim on a bond, when appropriate;

(3) File a claim with any and all banks which honored a financial instrument with a forged endorsement;

(4) Request payment in writing from any lawyer who was a partner of the dishonest lawyer at the time of the dishonest conduct; or any lawyer who was a principal of the professional corporation in which the dishonest lawyer was an employee or member; or against the employer of the dishonest lawyer; or

(5) Commence appropriate legal action against the lawyer or against any third party or entity who may be liable for the applicant's loss.

I. Public Participation. Public participation at Committee meetings shall be permitted only by prior permission granted by the Committee chairperson.

J. Committee Action.

(1) Actions of the Committee Which are Final Decisions. A decision by the committee on an application for payment of \$3000 or less - whether such decision be to make payment, to deny payment, to defer consideration, or for any action other than payment of more than \$3,000 - shall be final and without right of appeal to the Trustees.

(2) Actions of the Committee Which are Recommendations to the Trustees. A decision by the Committee (a) on an application for more than \$3000, or (b) involving a payment of more than \$3000 (regardless of the amount stated in the application), is not final and is a recommendation to the Trustees which shall have sole authority for final decisions in such cases.

RULE 7. ADJUDICATION BY TRUSTEES

A. A recommendation by the Committee (a) concerning applications for more than \$3000, or (b) that payments of more than \$3,000 be made to applicants regarding any one lawyer, shall be reported to the Trustees which may, in its discretion, adopt, modify, disapprove or take any other appropriate action on the Committee's recommendation.

B. A decision of the Trustees shall be final and there shall be no right of appeal from that decision.

RULE 8. NOTIFICATION OF APPLICANT AND LAWYER

Both the applicant and the lawyer who is the subject of an application shall be advised of any decision of the Committee or the Trustees.

RULE 9. LIMITATIONS ON AMOUNT OF REIMBURSEMENT

The Trustees may, at their discretion, set limitations on the amount of reimbursement.

RULE 10. NO LEGAL RIGHT TO PAYMENT

Any and all payments made to applicants in connection with the Lawyers' Fund for Client Protection are gratuitous and are the sole discretion of the Trustees.

RULE 11. RESTITUTION AND SUBROGATION

A. **Restitution.** A lawyer whose conduct results in payment to an applicant shall be liable to the Fund for restitution, and the Trustees may bring such action as they deem advisable to enforce restitution.

B. **Subrogation.** As a condition of payment, an applicant shall be required to provide the Fund with a pro tanto transfer of the applicant's rights against the lawyer, the lawyer's legal representative, estate or assigns; and of the claimant's rights against any third party or entity who may be liable for the applicant's loss.

C. **Action to Enforce Restitution.** In the event the Trustees commence a judicial action to enforce restitution, they shall advise the applicant who may then join in the action to recover any unreimbursed losses. If the applicant commences such an action against the lawyer or another entity who may be liable for the loss, the applicant shall notify the Fund who may join in the action.

D. **Duty to Cooperate.** As a condition of payment, the applicant shall be required to cooperate in all efforts that the Fund undertakes to achieve restitution.

RULE 12. COMPENSATION FOR REPRESENTING APPLICANTS

No lawyer shall charge or accept any payment for prosecuting an application on behalf of an applicant, unless such charge or payment has been approved by the Trustees.

RULE 13. CONFIDENTIALITY

A. Matters Which Are Public. The facts and circumstances which generated the loss, the Committee's findings of fact and recommendations to the Trustees with respect to payment of a claim, the amount of claim, the amount of loss as determined by the Committee, and the amount of payment authorized and made, shall be public. After payment is authorized, the name of the lawyer causing the loss shall be public.

B. Matters Which Are Not Public. The Committee's investigation and deliberations of any application; the name of the applicant, unless the applicant consents; or the name of the lawyer unless the lawyer consents or unless the lawyer's name is made public pursuant to these rules public as a result of a conviction, judgment, or disciplinary sanctions arising from the facts and circumstances of the application, shall not be public.

B. Matters Which Are Not Public. The Committee's investigation and deliberations of any application; the name of the applicant, unless the applicant consents; or the name of the lawyer unless the lawyer consents or unless the lawyer's name is made public as a result of a conviction, judgment, or disciplinary sanctions arising from the facts and circumstances of the application, shall not be public.

RULE 14. AMENDMENTS

These Rules may be amended, altered or repealed on the recommendation of the Committee by a vote of the Trustees, with the approval of the Supreme Court.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the State Supreme Court and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 99-11-022 INSURANCE COMMISSIONER'S OFFICE

[Filed May 12, 1999, 9:47 a.m.]

No. G 99-20

NOTICE OF HEARING

In the Matter of the Change in the Corporate Form of Organization of **PHYSICIANS INSURANCE EXCHANGE**

Physicians Insurance Exchange is a property and casualty insurance company organized under the laws of the state of Washington. Its administrative offices are located at 1730 Minor Avenue, Suite 1800, Seattle, Washington 98101.

Physicians Insurance Exchange has as its form of corporate organization that of a reciprocal insurer. The corporate organization of reciprocal insurers is prescribed by the provisions of Chapter 48.10 RCW.

The Subscribers Council of Physicians Insurance Exchange, and the Board of Directors of the Attorney-In-Fact, Washington State Physicians Insurance Association, Inc., has concluded that the long term advantages to it would be better served by converting the company's corporate form of organization from that of a reciprocal insurance company to that of a mutual insurance company.

A conversion of a reciprocal insurer to a mutual insurer is controlled by RCW 48.10.330. Pursuant to RCW 48.10.330(1), a notice to subscribers was submitted to the Insurance Commissioner on March 19, 1999. The notice was approved by the Insurance Commissioner on March 25, 1999.

The provisions of RCW 48.04.010 authorize the Insurance Commissioner of the state of Washington to hold a public hearing for any purpose within the scope of Title 48 she may deem necessary. The Insurance Commissioner has determined it is appropriate a public hearing be held on the conversion of Physicians Insurance Exchange from a reciprocal insurance company to a mutual insurance company.

YOU ARE HEREBY NOTIFIED that a hearing will be held commencing Monday, June 28, 1999, at 10:00 a.m. in the 2nd Floor Conference Room at 420 Golf Club Road, Lacey, Washington 98503 (location subject to change) to consider the proposed conversion of Physicians Insurance Exchange.

The basic facts relied on are those materials filed with the Insurance Commissioner pertaining to the proposed conversion. Those documents will be made part of the record of the hearing.

All parties may be represented at the hearing. They may examine witnesses and fully respond and present evidence and argument on all issues involved, as required by the Administrative Procedure Act. The hearing will be governed by the Administrative Procedure Act, Chapter 34.05 RCW, and the model rules of procedure contained in Chapter 10-08 WAC. A party who fails to attend or participate in any stage of the proceeding may be held in default in accordance with Chapter 34.05 RCW. Any party wishing to testify at the hearing should notify the hearing officer in writing at least seven days prior to the hearing of their desire to participate.

Assistant Deputy Commissioner John B. Woodall has been designated to hear and determine this matter. His address is Office of the Insurance Commissioner, Post Office Box 40259, Olympia, Washington 98504-0259. His telephone number is (360) 407-0535.

ENTERED AT OLYMPIA, WASHINGTON, this 11th day of May, 1999.

Deborah Senn
Insurance Commissioner
By:
John B. Woodall
Assistant Deputy Commissioner
for Company Supervision

MISC.

WSR 99-11-023**NOTICE OF PUBLIC MEETINGS****TRANSPORTATION IMPROVEMENT BOARD**

[Memorandum—May 7, 1999]

MEETING NOTICE FOR MAY 1999
TRANSPORTATION IMPROVEMENT BOARD
WALLA WALLA, WASHINGTON

Increase Committee, 10:00 a.m. - 12:00 p.m., Thursday, May 27, 1999, at the Best Western Suites Inn, 7 East Oak Street, Walla Walla.

Work Session, 1:00 p.m. - 3:00 p.m., May 27, 1999, at the Best Western Suites Inn.

Bus Tour, 3:00 p.m., Thursday, May 27, 1999. Meet at the Best Western Suites Inn.

Board Meeting, 9:00 a.m., May 28, 1999, at the Best Western Suites Inn.

SPECIAL NEEDS: For special accommodations or to request an auxiliary aid, please contact the TIB office at (360) 705-7300 by May 17, 1999.

The next scheduled meeting is June 25, 1999, in Wenatchee. A notice with further detail of the June meeting will be mailed June 4, 1999.

WSR 99-11-027**INTERPRETIVE STATEMENT**
DEPARTMENT OF HEALTH

[Filed May 13, 1999, 2:23 p.m.]

NOTICE OF ADOPTION OF INTERPRETIVE STATEMENT

Title: Can dispensers of contact lenses make substitutions where a prescription has been limited by the prescriber to a particular brand?

Issuing Entity: Secretary, Department of Health (based on recommendations from the Dispensing Opticians Advisory Committee).

Subject: The secretary, Department of Health, issued an interpretive statement in response to the request from Paul Sass.

Effective Date: March 2, 1999.

Contact Person: Judy Haenke, Program Manager, Department of Health, Board of Optometry and Dispensing Opticians Advisory Committee, P.O. Box 47863, Olympia, WA 98504-7863, (360) 236-4614.

WSR 99-11-028**INTERPRETIVE STATEMENT**
DEPARTMENT OF HEALTH

[Filed May 13, 1999, 2:24 p.m.]

NOTICE OF ADOPTION OF INTERPRETIVE STATEMENT

Title: Can osteopath ophthalmologists use the term "Eye M.D." in connection with professional advertising?

Issuing Entity: Washington State Nursing Care Quality Assurance Commission.

Subject: The commission issued an interpretive statement in response to the request from Leo Figgs, D.O.

Effective Date: April 14, 1999.

Contact Person: Arlene Robertson, Program Manager, Department of Health, Board of Osteopathic Medicine and Surgery, P.O. Box 47870, Olympia, WA 98504-7870, (360) 236-4945.

Meeting Date/Location

May 17, 1999
Pierce College
Fort Steilacoom Campus
Boardroom, Room 325H
9401 Farwest Drive S.W.
Lakewood, WA 98498-1999

Time

10:00 a.m.

WSR 99-11-029

INTERPRETIVE STATEMENT

DEPARTMENT OF HEALTH

[Filed May 13, 1999, 2:24 p.m.]

NOTICE OF ADOPTION OF INTERPRETIVE STATEMENT

Title: What are the requirements for medical personnel at camps?

Issuing Entity: Washington State Nursing Care Quality Assurance Commission.

Subject: The commission issued an advisory opinion in response to the request from Donna Utter, RN.

Effective Date: April 9, 1999.

Contact Person: Jeanne E. Vincent, RN, MS, Associate Nurse Practice Manager, Department of Health, Nursing Care Commission, P.O. Box 47864, Olympia, WA 98504-7864, (360) 236-4725.

WSR 99-11-040

NOTICE OF PUBLIC MEETINGS

**CONVENTION AND
TRADE CENTER**

[Memorandum—May 13, 1999]

A regular meeting of the Washington State Convention and Trade Center board of directors will be held on Wednesday, May 19, 1999, at 1:30 p.m. in the Level 5 Board Room of the Convention Center, 800 Convention Place, Seattle.

The Expansion Groundbreaking Ceremony will be held on Wednesday, May 19, at noon at 9th Avenue and Pike Street.

If you have any questions regarding this meeting, please call (206) 694-5000.

WSR 99-11-045

NOTICE OF PUBLIC MEETINGS

PIERCE COLLEGE

[Memorandum—May 14, 1999]

The board of trustees of Community College District Number Eleven (Pierce College) would like to announce an upcoming special board meeting:

WSR 99-11-047

INTERPRETIVE OR POLICY STATEMENT

**DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

[Filed May 17, 1999, 2:22 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: CN - 180.

Subject: Revisiting default orders that set support obligations.

Effective Date: April 26, 1999.

Document Description: This document explains one way that DCS can help correct administrative orders that are not based on correct information.

To receive a copy of the interpretive or policy statement, contact Stephanie Schiller, Division of Child Support, P.O. Box 9162, Olympia, WA 98507-9162, phone (360) 664-5230, TDD (360) 753-9122, fax (360) 586-3274, e-mail sschille@dshs.wa.gov.

April 29, 1999

Stephanie E. Schiller

WSR 99-11-048

INTERPRETIVE OR POLICY STATEMENT

**DEPARTMENT OF
SOCIAL AND HEALTH SERVICES**

[Filed May 17, 1999, 2:24 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: CN - 184.

Subject: License suspension, amended.

Effective Date: April 23, 1999.

Document Description: This document explains procedural changes that have occurred in the license suspension process since DCS published CN 164.

To receive a copy of the interpretive or policy statement, contact Stephanie Schiller, Division of Child Support, P.O. Box 9162, Olympia, WA 98507-9162, phone (360) 664-5230, TDD (360) 753-9122, fax (360) 586-3274, e-mail sschille@dshs.wa.gov.

April 29, 1999

Stephanie E. Schiller

WSR 99-11-049
INTERPRETIVE OR POLICY STATEMENT
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
[Filed May 17, 1999, 2:27 p.m.]

DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: CN - 186.

Subject: Tribal TANF.

Effective Date: April 29, 1999.

Document Description: DCS has signed agreements with two Washington tribes that have tribal TANF programs. This document explains to staff how to handle child support cases that have some connection with tribal TANF programs.

To receive a copy of the interpretive or policy statement, contact Stephanie Schiller, Division of Child Support, P.O. Box 9162, Olympia, WA 98507-9162, phone (360) 664-5230, TDD (360) 753-9122, fax (360) 586-3274, e-mail sschille@dshs.wa.gov.

April 29, 1999
Stephanie E. Schiller

instead of the Water Resources Education Center in Vancouver, Washington.

If you have any questions, call (360) 753-5677.

WSR 99-11-081

NOTICE OF PUBLIC MEETINGS
TRANSPORTATION COMMISSION
[Memorandum—May 17, 1999]

Following are the Transportation Commission's 1999 special local jurisdiction meetings to be conducted in 1999:

Wednesday, June 9, 1999	Yakima, Washington
Wednesday, September 29, 1999	Spokane, Washington
Tuesday, October 26, 1999	Everett, Washington

All meetings will be held between 8:30 a.m. and 5:00 p.m. at the location listed above.

WSR 99-11-082

NOTICE OF PUBLIC MEETINGS
EASTERN WASHINGTON UNIVERSITY
[Memorandum—May 19, 1999]

EASTERN WASHINGTON UNIVERSITY
BOARD OF TRUSTEES
May 21, 1999, 10:00 a.m.
Cheney Campus
Pence Union Building
Room 263-265

Eastern Washington University strives to satisfy all requests for special access needs for persons with disabilities. Requests for such accommodation are welcome and may be made by calling the President's Office, (509) 359-2371.

CORRECTED MAY 17, 1999		
March 19, 1999	Department of Corrections, Olympia	1:00 p.m. to 5:00 p.m.
March 20, 1999	Ramada Inn, Olympia	8:00 a.m. to 1:00 p.m.
June 18, 1999	Airway Heights Corr, Ctr, Spokane	11:00 a.m. to 5:00 p.m.
June 19, 1999	Ridpath Hotel, Spokane	8:00 a.m. to 1:00 p.m.
September 17, 1999	Nordic Inn, Aberdeen	3:00 p.m. to 5:00 p.m.
September 18, 1999	Nordic Inn, Aberdeen	8:00 a.m. to 1:00 p.m.
December 10, 1999	Department of Corrections, Olympia	1:00 p.m. to 5:00 p.m.
December 11, 1999	Cavanaugh's, Olympia	8:00 a.m. to 1:00 p.m.

Contact Sheila Pearson, (360) 753-5861.

WSR 99-11-080
NOTICE OF PUBLIC MEETINGS
WORKFORCE TRAINING AND
EDUCATION COORDINATING BOARD
[Memorandum—May 17, 1999]

The June 23, 1999, meeting of the Workforce Training and Education Coordinating Board will be held at the Chberg Building Hearing Room 4, Olympia, Washington

Table of WAC Sections Affected

KEY TO TABLE

This table covers the current calendar year through this issue of the Register and should be used to locate rules amended, adopted, or repealed subsequent to the publication date of the latest WAC or Supplement.

Symbols:

AMD = Amendment of existing section
 A/R = Amending and recodifying a section
 DECOD = Decodification of an existing section
 NEW = New section not previously codified
 OBJECT = Notice of objection by Joint Administrative Rules Review Committee
 PREP = Preproposal comments
 RE-AD = Readoption of existing section
 RECOD = Recodification of previously codified section
 REP = Repeal of existing section
 RESCIND = Rescind of existing section
 REVIEW = Review of previously adopted rule
 SUSP = Suspending an existing section

Suffixes:

-C = Continuance of previous proposal
 -E = Emergency action
 -P = Proposed action
 -S = Supplemental notice
 -W = Withdrawal of proposed action
 -XA = Expedited adoption
 -XR = Expedited repeal
 No suffix means permanent action

WAC # Shows the section number under which an agency rule is or will be codified in the Washington Administrative Code.

WSR # Shows the issue of the Washington State Register where the document may be found; the last three digits identify the document within the issue.

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
4- 25-530	PREP	99-05-025	16- 54-016	AMD-P	99-03-084	16- 86-020	AMD	99-09-025
4- 25-750	PREP	99-05-026	16- 54-016	REP	99-09-023	16- 86-030	AMD-P	99-03-087
4- 25-780	PREP	99-05-027	16- 54-018	NEW	99-09-023	16- 86-030	AMD	99-09-025
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16- 05-005	REP	99-08-039	16- 54-020	AMD	99-09-023	16- 86-040	AMD	99-09-025
16- 05-010	AMD-P	99-05-022	16- 54-030	AMD-P	99-03-084	16- 86-055	AMD-P	99-03-087
16- 05-010	AMD	99-08-039	16- 54-030	AMD	99-09-023	16- 86-055	AMD	99-09-025
16- 05-015	REP-P	99-05-022	16- 54-040	AMD-P	99-03-084	16- 86-060	AMD-P	99-03-087
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16- 05-030	REP	99-08-039	16- 54-101	AMD	99-09-023	16- 86-090	AMD	99-09-025
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16- 05-035	REP	99-08-039	16- 54-120	AMD	99-09-023	16- 86-092	AMD	99-09-025
16- 05-040	AMD-P	99-05-022	16- 54-135	AMD-P	99-03-084	16- 86-093	REP-P	99-03-087
16- 05-040	AMD	99-08-039	16- 54-135	AMD	99-09-023	16- 86-093	REP	99-09-025
16- 05-045	REP-P	99-05-022	16- 54-150	REP-P	99-03-084	16- 86-095	AMD-P	99-03-087
16- 05-045	REP	99-08-039	16- 54-150	REP	99-09-023	16- 86-095	AMD	99-09-025
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16- 19-110	NEW-P	99-07-116	16- 59-020	AMD-P	99-03-085	16- 89-005	NEW-P	99-03-086
16- 19-120	NEW-P	99-07-116	16- 59-020	AMD	99-09-024	16- 89-005	NEW	99-09-026
16- 19-130	NEW-P	99-07-116	16- 59-030	AMD-P	99-03-085	16- 89-010	NEW-P	99-03-086
16- 19-140	NEW-P	99-07-116	16- 59-030	AMD	99-09-024	16- 89-010	NEW	99-09-026
16- 19-200	NEW-P	99-07-116	16- 59-060	AMD-P	99-03-085	16- 89-015	NEW-P	99-03-086
16- 19-210	NEW-P	99-07-116	16- 59-060	AMD	99-09-024	16- 89-015	NEW	99-09-026
16- 19-300	NEW-P	99-07-116	16- 59-070	REP-P	99-03-085	16- 89-020	NEW-P	99-03-086
16- 19-310	NEW-P	99-07-116	16- 59-070	REP	99-09-024	16- 89-020	NEW	99-09-026
16- 19-320	NEW-P	99-07-116	16- 86	AMD-P	99-03-087	16- 89-030	NEW-P	99-03-086
16- 19-330	NEW-P	99-07-116	16- 86-005	AMD-P	99-03-087	16- 89-030	NEW	99-09-026
16- 30	AMD-XA	99-07-115	16- 86-005	AMD	99-09-025	16- 89-040	NEW-P	99-03-086
16- 30-001	REP-XA	99-07-115	16- 86-015	AMD-P	99-03-087	16- 89-040	NEW	99-09-026
16- 30-010	AMD-XA	99-07-115	16- 86-015	AMD	99-09-025	16- 89-050	NEW-P	99-03-086
16- 30-100	REP-XA	99-07-115	16- 86-017	AMD-P	99-03-087	16- 89-050	NEW	99-09-026
16- 54-010	AMD-P	99-03-084	16- 86-017	AMD	99-09-025	16- 89-060	NEW-P	99-03-086
16- 54-010	AMD	99-09-023	16- 86-020	AMD-P	99-03-087	16- 89-060	NEW	99-09-026

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16- 89-070	NEW	99-09-026	16-316-717	PREP	99-04-096	16-462-050	AMD-XA	99-07-127
16- 89-080	NEW-P	99-03-086	16-316-727	PREP	99-04-096	16-462-055	AMD-XA	99-07-127
16- 89-080	NEW	99-09-026	16-319-041	PREP	99-04-095	16-462-060	REP-XA	99-07-127
16- 89-090	NEW-P	99-03-086	16-322	PREP	99-03-093	16-470	PREP	99-03-092
16- 89-090	NEW	99-09-026	16-401	PREP	99-03-095	16-470-900	PREP	99-03-096
16- 89-100	NEW-P	99-03-086	16-401-019	AMD-P	99-07-126	16-470-900	AMD-P	99-07-125
16- 89-100	NEW	99-09-026	16-401-020	AMD-P	99-07-126	16-470-905	PREP	99-03-096
16- 89-110	NEW-P	99-03-086	16-401-021	NEW-P	99-07-126	16-470-905	AMD-P	99-07-125
16- 89-110	NEW	99-09-026	16-401-023	AMD-P	99-07-126	16-470-910	PREP	99-03-096
16- 89-120	NEW-P	99-03-086	16-401-025	AMD-P	99-07-126	16-470-910	AMD-P	99-07-125
16- 89-120	NEW	99-09-026	16-401-026	NEW-P	99-07-126	16-470-911	NEW-P	99-07-125
16-108	PREP	99-03-045	16-401-030	AMD-P	99-07-126	16-470-915	PREP	99-03-096
16-108-010	AMD-P	99-07-118	16-401-031	NEW-P	99-07-126	16-470-915	AMD-P	99-07-125
16-125	PREP	99-04-066	16-401-040	AMD-P	99-07-126	16-470-916	NEW-P	99-07-125
16-142	PREP	99-04-067	16-401-041	NEW-P	99-07-126	16-470-920	PREP	99-03-096
16-142-001	REP-P	99-09-095	16-401-050	AMD-P	99-07-126	16-470-920	AMD-P	99-07-125
16-142-010	REP-P	99-09-095	16-403	PREP	99-03-108	16-470-921	NEW-P	99-07-125
16-142-020	REP-P	99-09-095	16-403-141	AMD-P	99-11-096	16-481	PREP	99-03-090
16-142-030	REP-P	99-09-095	16-406-001	PREP	99-04-094	16-483	PREP	99-03-091
16-142-040	REP-P	99-09-095	16-406-020	PREP	99-04-094	16-532-020	AMD-P	99-02-063
16-142-050	REP-P	99-09-095	16-406-020	AMD-P	99-08-108	16-532-020	AMD	99-10-095
16-142-060	REP-P	99-09-095	16-406-025	NEW-P	99-08-108	16-545-010	NEW	99-02-064
16-142-100	NEW-P	99-09-095	16-406-030	PREP	99-04-094	16-545-015	NEW	99-02-064
16-142-110	NEW-P	99-09-095	16-406-030	AMD-P	99-08-108	16-545-020	NEW	99-02-064
16-142-120	NEW-P	99-09-095	16-406-050	PREP	99-04-094	16-545-030	NEW	99-02-064
16-142-130	NEW-P	99-09-095	16-406-050	AMD-P	99-08-108	16-545-040	NEW	99-02-064
16-142-140	NEW-P	99-09-095	16-412-010	REP-XR	99-08-112	16-545-041	NEW	99-02-064
16-142-150	NEW-P	99-09-095	16-412-020	REP-XR	99-08-112	16-545-050	NEW	99-02-064
16-142-160	NEW-P	99-09-095	16-412-030	REP-XR	99-08-112	16-545-080	NEW	99-02-064
16-142-170	NEW-P	99-09-095	16-412-040	REP-XR	99-08-112	16-561-010	AMD-P	99-07-108
16-165-100	NEW-P	99-08-088	16-412-050	REP-XR	99-08-112	16-561-010	AMD-C	99-11-024
16-165-110	NEW-P	99-08-088	16-412-060	REP-XR	99-08-112	16-561-130	NEW-P	99-07-108
16-165-120	NEW-P	99-08-088	16-424-010	REP-XR	99-08-112	16-561-130	NEW-C	99-11-024
16-165-130	NEW-P	99-08-088	16-424-020	REP-XR	99-08-112	16-575-015	NEW-P	99-06-070
16-165-140	NEW-P	99-08-088	16-424-030	REP-XR	99-08-112	16-604-010	REP	99-04-069
16-165-150	NEW-P	99-08-088	16-436	PREP	99-08-111	16-645-005	NEW-P	99-02-066
16-165-160	NEW-P	99-08-088	16-448	PREP	99-08-110	16-645-005	NEW	99-06-072
16-167-010	AMD-P	99-07-117	16-451-010	REP-XR	99-08-112	16-645-010	NEW-P	99-02-066
16-167-020	AMD-P	99-07-117	16-451-020	REP-XR	99-08-112	16-645-010	NEW	99-06-072
16-167-030	AMD-P	99-07-117	16-451-030	REP-XR	99-08-112	16-662-105	AMD-P	99-04-111
16-167-040	AMD-P	99-07-117	16-451-040	REP-XR	99-08-112	16-662-105	AMD	99-07-056
16-167-050	AMD-P	99-07-117	16-451-050	REP-XR	99-08-112	16-662-110	AMD-P	99-04-111
16-200-695	AMD-P	99-04-093	16-451-060	REP-XR	99-08-112	16-662-110	AMD	99-07-056
16-200-695	AMD	99-08-037	16-451-070	REP-XR	99-08-112	16-752	PREP	99-07-123
16-200-705	AMD-P	99-04-093	16-458	AMD-XA	99-08-113	16-752-115	REP-XR	99-07-124
16-200-705	AMD	99-08-037	16-458-004	REP-XA	99-08-113	16-752-115	REP	99-11-087
16-200-7061	AMD-P	99-04-093	16-458-075	AMD-XA	99-08-113	16-752-120	REP-XR	99-07-124
16-200-7061	AMD	99-08-037	16-458-080	AMD-XA	99-08-113	16-752-120	REP	99-11-087
16-212	PREP	99-07-132	16-458-085	AMD-XA	99-08-113	16-752-125	REP-XR	99-07-124
16-212-010	AMD-P	99-11-095	16-460-005	REP-XR	99-08-112	16-752-125	REP	99-11-087
16-212-030	AMD-P	99-11-095	16-460-008	REP-XR	99-08-112	16-752-130	REP-XR	99-07-124
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16-212-070	AMD-P	99-11-095	16-460-080	REP-XR	99-08-112	16-752-135	REP-XR	99-07-124
16-212-080	AMD-P	99-11-095	16-460-100	REP-XR	99-08-112	16-752-135	REP	99-11-087
16-212-082	AMD-P	99-11-095	16-461	PREP	99-03-108	16-752-140	REP-XR	99-07-124
16-219-010	PREP	99-07-088	16-461-010	AMD-P	99-11-096	16-752-140	REP	99-11-087
16-219-016	PREP	99-07-086	16-462	PREP	99-03-094	16-752-145	REP-XR	99-07-124
16-219-100	PREP	99-07-111	16-462	AMD-XA	99-07-127	16-752-145	REP	99-11-087
16-219-105	PREP	99-07-111	16-462-010	AMD-XA	99-07-127	16-752-146	REP-XR	99-07-124
16-228-320	REP-XR	99-04-006	16-462-015	AMD-XA	99-07-127	16-752-146	REP	99-11-087
16-228-320	REP	99-07-113	16-462-020	AMD-XA	99-07-127	16-752-147	REP-XR	99-07-124
16-228-330	REP-XR	99-04-006	16-462-021	NEW-XA	99-07-127	16-752-147	REP	99-11-087
16-228-330	REP	99-07-113	16-462-022	NEW-XA	99-07-127	16-752-150	REP-XR	99-07-124
16-228-340	REP-XR	99-04-007	16-462-025	AMD-XA	99-07-127	16-752-150	REP	99-11-087
16-228-340	REP	99-07-112	16-462-030	AMD-XA	99-07-127	16-752-155	REP-XR	99-07-124
16-230	PREP	99-07-087	16-462-035	AMD-XA	99-07-127	16-752-155	REP	99-11-087

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16-752-160	REP	99-11-087	67- 75-042	AMD	99-05-005	132A-168-016	NEW-P	99-10-100
6-752-165	REP-XR	99-07-124	67- 75-044	AMD	99-05-005	132A-168-021	NEW-P	99-10-100
16-752-165	REP	99-11-087	67- 75-050	AMD	99-05-005	132A-168-026	NEW-P	99-10-100
16-752-170	REP-XR	99-07-124	82- 50-021	AMD-XA	99-07-128	132A-176-006	NEW-P	99-10-100
16-752-170	REP	99-11-087	98- 70-010	PREP	99-10-017	132A-276-031	NEW-P	99-10-100
25- 12-010	REP-P	99-03-098	130- 16	PREP	99-08-060	132A-276-045	AMD-P	99-10-100
25- 12-020	REP-P	99-03-098	131- 16-021	PREP	99-09-017	132A-280-006	NEW-P	99-10-100
25- 12-030	REP-P	99-03-098	131- 16-450	PREP	99-04-029	132A-280-011	NEW-P	99-10-100
25- 12-040	REP-P	99-03-098	131- 16-450	AMD-E	99-07-057	132A-280-016	NEW-P	99-10-100
25- 12-050	REP-P	99-03-098	131- 16-450	AMD-P	99-08-013	132A-280-021	NEW-P	99-10-100
25- 12-060	REP-P	99-03-098	131- 28	PREP	99-10-015	132A-280-026	NEW-P	99-10-100
25- 12-070	REP-P	99-03-098	131- 46	PREP	99-08-057	132A-280-031	NEW-P	99-10-100
25- 12-110	NEW-P	99-03-098	132A	PREP	99-07-060	132A-280-035	NEW-P	99-10-100
25- 12-120	NEW-P	99-03-098	132A-104-011	NEW-P	99-10-100	132A-280-040	NEW-P	99-10-100
25- 12-130	NEW-P	99-03-098	132A-104-016	NEW-P	99-10-100	132A-280-045	NEW-P	99-10-100
25- 12-140	NEW-P	99-03-098	132A-104-021	NEW-P	99-10-100	132A-280-050	NEW-P	99-10-100
25- 12-150	NEW-P	99-03-098	132A-108-010	NEW-P	99-10-100	132A-280-055	NEW-P	99-10-100
25- 12-160	NEW-P	99-03-098	132A-108-020	NEW-P	99-10-100	132A-280-060	NEW-P	99-10-100
25- 12-170	NEW-P	99-03-098	132A-108-030	NEW-P	99-10-100	132A-280-065	NEW-P	99-10-100
25- 12-180	NEW-P	99-03-098	132A-108-040	NEW-P	99-10-100	132A-280-070	NEW-P	99-10-100
50- 16-020	REP-XR	99-04-073	132A-108-050	NEW-P	99-10-100	132A-280-075	NEW-P	99-10-100
50- 16-020	REP	99-08-123	132A-108-060	NEW-P	99-10-100	132A-280-080	NEW-P	99-10-100
50- 16-025	REP-XR	99-04-073	132A-108-070	NEW-P	99-10-100	132A-280-085	NEW-P	99-10-100
50- 16-025	REP	99-08-123	132A-108-080	NEW-P	99-10-100	132A-320-010	NEW-P	99-10-100
50- 16-030	REP-XR	99-04-073	132A-108-090	NEW-P	99-10-100	132A-320-020	NEW-P	99-10-100
50- 16-030	REP	99-08-123	132A-116-001	NEW-P	99-10-100	132A-320-030	NEW-P	99-10-100
50- 16-035	REP-XR	99-04-073	132A-116-006	NEW-P	99-10-100	132A-350-015	NEW-P	99-10-100
50- 16-035	REP	99-08-123	132A-116-011	NEW-P	99-10-100	132A-350-020	NEW-P	99-10-100
50- 16-040	REP-XR	99-04-073	132A-116-016	NEW-P	99-10-100	132A-350-030	NEW-P	99-10-100
50- 16-040	REP	99-08-123	132A-116-021	NEW-P	99-10-100	132A-350-040	NEW-P	99-10-100
50- 16-045	REP-XR	99-04-073	132A-116-026	NEW-P	99-10-100	132A-350-045	NEW-P	99-10-100
50- 16-045	REP	99-08-123	132A-116-030	NEW-P	99-10-100	132A-350-050	NEW-P	99-10-100
50- 16-050	REP-XR	99-04-073	132A-120-006	NEW-P	99-10-100	132H-168-010	REP-P	99-05-018
50- 16-050	REP	99-08-123	132A-120-011	NEW-P	99-10-100	132H-168-010	REP	99-10-045
50- 16-055	REP-XR	99-04-073	132A-120-016	NEW-P	99-10-100	132H-168-020	REP-P	99-05-018
50- 16-055	REP	99-08-123	132A-120-021	NEW-P	99-10-100	132H-168-020	REP	99-10-045
50- 16-060	REP-XR	99-04-073	132A-120-026	NEW-P	99-10-100	132H-168-030	REP-P	99-05-018
50- 16-060	REP	99-08-123	132A-120-031	NEW-P	99-10-100	132H-168-030	REP	99-10-045
50- 16-065	REP-XR	99-04-073	132A-120-036	NEW-P	99-10-100	132H-168-040	REP-P	99-05-018
50- 16-065	REP	99-08-123	132A-120-041	NEW-P	99-10-100	132H-168-040	REP	99-10-045
50- 16-070	REP-XR	99-04-073	132A-120-046	NEW-P	99-10-100	132H-168-050	REP-P	99-05-018
50- 16-070	REP	99-08-123	132A-120-051	NEW-P	99-10-100	132H-168-050	REP	99-10-045
50- 16-075	REP-XR	99-04-073	132A-120-056	NEW-P	99-10-100	132H-168-060	REP-P	99-05-018
50- 16-075	REP	99-08-123	132A-120-061	NEW-P	99-10-100	132H-168-060	REP	99-10-045
50- 16-080	REP-XR	99-04-073	132A-122-011	NEW-P	99-10-100	132H-168-070	REP-P	99-05-018
50- 16-080	REP	99-08-123	132A-122-021	NEW-P	99-10-100	132H-168-070	REP	99-10-045
50- 16-085	REP-XR	99-04-073	132A-130-010	NEW-P	99-10-100	132H-168-080	REP-P	99-05-018
50- 16-085	REP	99-08-123	132A-130-020	NEW-P	99-10-100	132H-168-080	REP	99-10-045
50- 16-090	REP-XR	99-04-073	132A-130-030	NEW-P	99-10-100	132H-168-090	REP-P	99-05-018
50- 16-090	REP	99-08-123	132A-131-010	NEW-P	99-10-100	132H-168-090	REP	99-10-045
50- 16-095	REP-XR	99-04-073	132A-131-020	NEW-P	99-10-100	132H-168-990	REP-P	99-05-018
50- 16-095	REP	99-08-123	132A-133-020	NEW-P	99-10-100	132H-168-990	REP	99-10-045
50- 16-100	REP-XR	99-04-073	132A-140-001	NEW-P	99-10-100	132H-168-9901	REP-P	99-05-018
50- 16-100	REP	99-08-123	132A-140-006	NEW-P	99-10-100	132H-168-9901	REP	99-10-045
50- 16-105	REP-XR	99-04-073	132A-140-011	NEW-P	99-10-100	132H-168-9902	REP-P	99-05-018
50- 16-105	REP	99-08-123	132A-140-016	NEW-P	99-10-100	132H-168-9902	REP	99-10-045
50- 44-037	NEW-P	99-07-131	132A-140-021	NEW-P	99-10-100	132H-168-9903	REP-P	99-05-018
50- 44-037	NEW	99-10-024	132A-140-026	NEW-P	99-10-100	132H-168-9903	REP	99-10-045
50- 44-039	NEW-P	99-07-131	132A-140-030	NEW-P	99-10-100	132H-169-010	NEW-P	99-05-018
50- 44-039	NEW	99-10-024	132A-150-010	NEW-P	99-10-100	132H-169-010	NEW	99-10-045
51- 40-23110	REP-E	99-05-030	132A-150-020	NEW-P	99-10-100	132H-169-020	NEW-P	99-05-018
67- 55-040	AMD	99-05-005	132A-156-006	NEW-P	99-10-100	132H-169-020	NEW	99-10-045
67- 55-060	AMD	99-05-005	132A-156-011	NEW-P	99-10-100	132H-169-030	NEW-P	99-05-018
67- 75-010	AMD	99-05-005	132A-156-016	NEW-P	99-10-100	132H-169-030	NEW	99-10-045
67- 75-020	AMD	99-05-005	132A-160-006	NEW-P	99-10-100	132H-169-040	NEW-P	99-05-018
67- 75-030	AMD	99-05-005	132A-168-006	NEW-P	99-10-100	132H-169-040	NEW	99-10-045

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132N-160-070	NEW-P	99-10-044	162- 22-075	NEW-P	99-04-108	173-410	PREP	99-07-093
32N-160-080	NEW-P	99-10-044	162- 22-080	REP-P	99-04-108	173-415	PREP	99-10-042
132N-160-090	NEW-P	99-10-044	162- 22-090	AMD-P	99-04-108	173-425	AMD-P	99-07-110
132P- 33-010	AMD-P	99-08-019	162- 22-100	AMD-P	99-04-108	173-425-010	AMD-P	99-07-110
132P- 33-020	AMD-P	99-08-019	162- 26-010	AMD-P	99-04-108	173-425-020	AMD-P	99-07-110
132P- 33-080	AMD-P	99-08-019	162- 26-020	REP-P	99-04-108	173-425-030	AMD-P	99-07-110
132P- 33-100	AMD-P	99-08-019	162- 26-030	REP-P	99-04-108	173-425-040	AMD-P	99-07-110
132P- 33-120	AMD-P	99-08-019	162- 26-035	REP-P	99-04-108	173-425-050	AMD-P	99-07-110
132P- 33-123	NEW-P	99-08-019	162- 26-040	AMD-P	99-04-108	173-425-060	AMD-P	99-07-110
132P- 33-125	NEW-P	99-08-019	162- 26-050	REP-P	99-04-108	173-425-070	AMD-P	99-07-110
132P- 33-130	AMD-P	99-08-019	162- 26-060	AMD-P	99-04-108	173-425-080	AMD-P	99-07-110
132P- 33-150	AMD-P	99-08-019	162- 26-070	AMD-P	99-04-108	173-425-090	REP-P	99-07-110
132P- 33-155	NEW-P	99-08-019	162- 26-080	AMD-P	99-04-108	173-425-100	REP-P	99-07-110
132P- 33-160	AMD-P	99-08-019	162- 26-090	REP-P	99-04-108	173-425-110	REP-P	99-07-110
132P- 33-170	AMD-P	99-08-019	162- 26-100	AMD-P	99-04-108	173-433	PREP	99-07-093
132P- 33-210	AMD-P	99-08-019	162- 26-110	AMD-P	99-04-108	173-434	PREP	99-07-093
132P- 33-220	AMD-P	99-08-019	162- 26-120	AMD-P	99-04-108	173-481	PREP	99-10-042
132P- 33-230	AMD-P	99-08-019	162- 26-135	NEW-P	99-04-108	173-532-085	NEW-S	99-08-125
132P- 33-260	AMD-P	99-08-019	162- 26-140	AMD-P	99-04-108	173-548	AMD-P	99-09-092
132P- 33-270	AMD-P	99-08-019	162- 30-010	AMD-P	99-04-108	173-548-001	NEW-P	99-09-092
132P-276	PREP	99-05-041	162- 30-020	AMD-P	99-04-108	173-548-002	NEW-P	99-09-092
132Q- 12-010	REP-C	99-05-040	162- 38-040	AMD-P	99-04-108	173-548-005	NEW-P	99-09-092
132Q- 12-010	REP	99-10-012	162- 38-100	AMD-P	99-04-108	173-548-010	AMD-P	99-09-092
132X- 10	PREP	99-06-032	162- 38-105	NEW-P	99-04-108	173-548-015	NEW-P	99-09-092
132X- 20	PREP	99-06-032	162- 38-110	AMD-P	99-04-108	173-548-020	AMD-P	99-09-092
132X- 30	PREP	99-06-032	162- 38-130	REP-P	99-04-108	173-548-030	AMD-P	99-09-092
132X- 40	PREP	99-06-032	173- 16-010	REP-P	99-08-124	173-548-031	NEW-P	99-09-092
132X- 50	PREP	99-06-032	173- 16-020	REP-P	99-08-124	173-548-032	NEW-P	99-09-092
132X- 60	PREP	99-06-032	173- 16-030	REP-P	99-08-124	173-548-033	NEW-P	99-09-092
136-130-050	AMD-P	99-09-084	173- 16-040	REP-P	99-08-124	173-548-034	NEW-P	99-09-092
162- 16-020	REP-P	99-04-108	173- 16-050	REP-P	99-08-124	173-548-035	NEW-P	99-09-092
162- 16-030	REP-P	99-04-108	173- 16-060	REP-P	99-08-124	173-548-036	NEW-P	99-09-092
162- 16-040	REP-P	99-04-108	173- 16-064	REP-P	99-08-124	173-548-037	NEW-P	99-09-092
162- 16-050	REP-P	99-04-108	173- 16-070	REP-P	99-08-124	173-548-040	AMD-P	99-09-092
162- 16-060	REP-P	99-04-108	173- 16-200	REP-P	99-08-124	173-548-050	AMD-P	99-09-092
162- 16-070	REP-P	99-04-108	173- 26-020	AMD-P	99-08-124	173-548-060	AMD-P	99-09-092
162- 16-080	REP-P	99-04-108	173- 26-095	NEW-P	99-08-124	173-548-070	AMD-P	99-09-092
162- 16-090	REP-P	99-04-108	173- 26-100	AMD-P	99-08-124	173-548-075	NEW-P	99-09-092
162- 16-100	REP-P	99-04-108	173- 26-110	AMD-P	99-08-124	173-548-076	NEW-P	99-09-092
162- 16-110	REP-P	99-04-108	173- 26-120	AMD-P	99-08-124	174-280-015	AMD-P	99-08-030
162- 16-120	REP-P	99-04-108	173- 26-170	NEW-P	99-08-124	174-280-030	AMD-P	99-08-030
162- 16-130	REP-P	99-04-108	173- 26-180	NEW-P	99-08-124	180- 08-015	NEW-P	99-04-079
162- 16-140	REP-P	99-04-108	173- 26-190	NEW-P	99-08-124	180- 08-015	NEW	99-10-092
162- 16-150	REP-P	99-04-108	173- 26-200	NEW-P	99-08-124	180- 16-195	AMD-P	99-04-080
162- 16-160	REP-P	99-04-108	173- 26-210	NEW-P	99-08-124	180- 16-195	AMD	99-10-091
162- 16-170	REP-P	99-04-108	173- 26-220	NEW-P	99-08-124	180- 16-215	PREP	99-04-088
162- 16-200	NEW-P	99-04-108	173- 26-230	NEW-P	99-08-124	180- 16-215	AMD-P	99-07-069
162- 16-210	NEW-P	99-04-108	173- 26-240	NEW-P	99-08-124	180- 16-220	AMD-P	99-04-080
162- 16-220	NEW-P	99-04-108	173- 26-250	NEW-P	99-08-124	180- 16-220	AMD	99-10-091
162- 16-230	NEW-P	99-04-108	173- 26-260	NEW-P	99-08-124	180- 16-221	REP-XR	99-03-001
162- 16-240	NEW-P	99-04-108	173-201A	PREP	99-05-060	180- 16-221	REP	99-07-054
162- 16-250	NEW-P	99-04-108	173-202-020	AMD-E	99-07-077	180- 16-222	REP-XR	99-03-001
162- 16-260	NEW-P	99-04-108	173-202-020	AMD-E	99-09-001	180- 16-222	REP	99-07-054
162- 16-270	NEW-P	99-04-108	173-202-020	AMD-C	99-09-094	180- 16-226	REP-XR	99-03-001
162- 16-280	NEW-P	99-04-108	173-224	PREP	99-11-055	180- 16-226	REP	99-07-054
162- 16-290	NEW-P	99-04-108	173-303	PREP	99-10-041	180- 16-231	REP-XR	99-03-001
162- 22-010	AMD-P	99-04-108	173-400	PREP	99-07-093	180- 16-231	REP	99-07-054
162- 22-020	AMD-P	99-04-108	173-400	PREP	99-09-093	180- 16-236	REP-XR	99-03-001
162- 22-025	NEW-P	99-04-108	173-400	PREP	99-10-042	180- 16-236	REP	99-07-054
162- 22-030	REP-P	99-04-108	173-400-030	AMD-XA	99-04-097	180- 16-238	REP-XR	99-03-001
162- 22-035	NEW-P	99-04-108	173-400-040	AMD-XA	99-04-097	180- 16-238	REP	99-07-054
162- 22-040	REP-P	99-04-108	173-400-060	AMD-XA	99-04-097	180- 16-240	REP-P	99-04-080
162- 22-045	NEW-P	99-04-108	173-400-070	AMD-XA	99-04-097	180- 16-240	REP	99-10-091
162- 22-050	REP-P	99-04-108	173-400-075	AMD-XA	99-04-097	180- 18-055	NEW-P	99-04-082
162- 22-060	REP-P	99-04-108	173-400-104	AMD-XA	99-04-097	180- 18-055	NEW-P	99-06-089
162- 22-065	NEW-P	99-04-108	173-400-115	AMD-XA	99-04-097	180- 18-055	NEW	99-10-094

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180- 20-035	REP	99-08-004	180- 82-200	NEW	99-04-008	192- 04-190	AMD	99-08-073
180- 20-040	REP	99-08-004	180- 82-201	NEW	99-04-008	192- 12-005	REP	99-08-073
180- 20-055	REP	99-08-004	180- 82-202	NEW	99-04-008	192- 12-035	REP-XR	99-10-005
180- 20-060	REP	99-08-004	180- 82-204	NEW	99-04-008	192- 12-050	PREP	99-11-088
180- 20-070	REP	99-08-004	180- 82-210	NEW	99-04-008	192- 12-072	REP-P	99-05-068
180- 20-075	REP	99-08-004	180- 82-215	NEW	99-04-008	192- 12-074	REP-XA	99-11-091
180- 20-080	REP	99-08-004	180- 82-300	NEW	99-04-008	192- 12-076	REP-XA	99-11-090
180- 20-101	AMD	99-08-004	180- 82-302	NEW-W	99-08-081	192- 12-080	REP-XR	99-10-006
180- 20-111	AMD	99-08-004	180- 82-304	NEW	99-04-008	192- 12-090	REP-XA	99-11-094
180- 20-115	AMD	99-08-004	180- 82-306	NEW-W	99-08-081	192- 12-110	REP-XR	99-10-007
180- 20-120	AMD	99-08-004	180- 82-308	NEW	99-04-008	192- 12-115	REP-XR	99-10-008
180- 20-150	REP	99-08-004	180- 82-310	NEW	99-04-008	192- 12-141	REP	99-08-073
180- 22-150	PREP	99-04-083	180- 82-312	NEW	99-04-008	192- 12-150	REP	99-08-073
180- 22-150	AMD-P	99-07-065	180- 82-314	NEW	99-04-008	192- 12-182	REP	99-08-073
180- 25	PREP	99-06-074	180- 82-315	NEW-P	99-04-110	192- 12-330	AMD	99-08-073
180- 26	PREP	99-06-080	180- 82-315	NEW	99-07-102	192- 15-150	AMD	99-08-073
180- 27	PREP	99-06-079	180- 82-316	NEW	99-04-008	192- 16-001	REP-XA	99-11-092
180- 27-082	NEW-W	99-03-026	180- 82-317	NEW-P	99-04-110	192- 16-051	REP-E	99-05-003
180- 27-083	NEW-W	99-03-026	180- 82-317	NEW	99-07-102	192- 16-052	REP-E	99-05-003
180- 29	PREP	99-06-078	180- 82-318	NEW	99-04-008	192- 16-057	REP-E	99-05-003
180- 29-040	AMD-P	99-10-001	180- 82-319	NEW-P	99-04-110	192- 23-002	REP	99-08-073
180- 29-095	PREP	99-04-086	180- 82-319	NEW	99-07-102	192- 23-013	REP	99-08-073
180- 29-095	AMD-P	99-07-067	180- 82-320	NEW	99-04-008	192- 23-018	REP	99-08-073
180- 31	PREP	99-06-077	180- 82-321	NEW-P	99-04-110	192- 24-001	REP	99-08-073
180- 32	PREP	99-06-076	180- 82-321	NEW	99-07-102	192- 24-010	REP	99-08-073
180- 33	PREP	99-06-075	180- 82-322	NEW	99-04-008	192- 24-020	REP	99-08-073
180- 40-215	PREP	99-04-084	180- 82-324	NEW	99-04-008	192- 24-030	REP-P	99-09-097
180- 40-215	AMD-P	99-07-064	180- 82-326	NEW	99-04-008	192-110-005	NEW	99-08-073
180- 41-035	PREP	99-04-090	180- 82-328	NEW	99-04-008	192-110-015	NEW	99-08-073
180- 41-035	AMD-P	99-07-073	180- 82-330	NEW	99-04-008	192-110-020	NEW	99-08-073
180- 51	PREP	99-10-089	180- 82-331	NEW	99-06-005	192-110-050	NEW	99-08-073
180- 51-050	AMD-P	99-04-081	180- 82-332	NEW	99-04-008	192-120-001	NEW	99-08-073
180- 51-050	AMD	99-10-093	180- 82-334	NEW	99-04-008	192-120-010	NEW	99-08-073
180- 51-107	NEW-P	99-04-082	180- 82-336	NEW	99-04-008	192-120-020	NEW	99-08-073
180- 51-107	NEW-P	99-06-089	180- 82-338	NEW-W	99-08-081	192-120-030	NEW	99-08-073
180- 51-107	NEW	99-10-094	180- 82-339	NEW	99-04-008	192-120-035	NEW	99-08-073
180- 51-110	PREP	99-04-091	180- 82-340	NEW-W	99-08-081	192-120-040	NEW	99-08-073
180- 51-110	AMD-P	99-07-072	180- 82-342	NEW	99-04-008	192-140-005	NEW	99-08-073
180- 52	PREP	99-10-090	180- 82-343	NEW	99-04-008	192-140-010	NEW	99-08-073
180- 55-085	PREP	99-04-089	180- 82-344	NEW	99-04-008	192-140-020	NEW	99-08-073
180- 55-085	AMD-P	99-07-068	180- 82-346	NEW	99-04-008	192-140-025	NEW	99-08-073
180- 56-245	PREP	99-04-092	180- 82-348	NEW	99-04-008	192-140-030	NEW	99-08-073
180- 56-245	AMD-P	99-07-071	180- 82-349	NEW-P	99-04-110	192-150-090	NEW	99-08-073
180- 77A	PREP	99-04-046	180- 82-349	NEW	99-07-102	192-180-005	NEW-P	99-09-097
180- 77A-028	AMD-P	99-07-049	180- 82-350	NEW	99-04-008	192-180-010	NEW-P	99-09-097
180- 77A-029	AMD-P	99-07-049	180- 82-352	NEW	99-04-008	192-180-015	NEW-P	99-09-097
180- 77A-080	NEW-P	99-07-049	180- 82-354	NEW	99-04-008	192-180-020	NEW-P	99-09-097
180- 78-155	PREP	99-04-087	180- 82-355	NEW	99-04-008	192-180-025	NEW-P	99-09-097
180- 78-155	AMD-P	99-07-070	180- 82-356	NEW	99-04-008	192-180-030	NEW-P	99-09-097
180- 78-207	PREP	99-04-087	180- 82-360	NEW	99-04-008	192-200-020	NEW	99-08-073
180- 78-207	AMD-P	99-07-070	180- 82-362	NEW-W	99-08-081	192-210-005	NEW-E	99-05-003
180- 78-210	PREP	99-04-087	180- 85-075	AMD-E	99-05-002	192-210-010	NEW-E	99-05-003
180- 78-210	AMD-P	99-07-070	180- 85-075	PREP	99-06-039	192-210-015	NEW-E	99-05-003
180- 79A-223	PREP	99-06-038	180- 85-075	AMD-P	99-10-002	192-300-050	NEW-P	99-05-068
180- 79A-223	AMD-P	99-10-003	182- 08-095	PREP	99-11-100	192-300-150	NEW-XA	99-11-094
180- 79A-300	AMD	99-06-006	182- 12-111	PREP	99-11-099	192-310-035	NEW-XA	99-11-092
180- 79A-380	PREP	99-04-085	182- 12-119	PREP	99-11-099	192-310-040	NEW-XA	99-11-093
180- 79A-380	AMD-P	99-07-066	182- 25-030	PREP	99-08-107	192-310-050	PREP	99-11-088
180- 82	PREP	99-04-109	182- 25-040	PREP	99-05-077	192-310-055	PREP	99-11-089
180- 82-002	NEW	99-04-008	182- 25-085	PREP	99-05-077	192-320-050	NEW-P	99-05-068
180- 82-004	NEW	99-04-008	182- 25-085	NEW-P	99-08-106	192-320-055	NEW-XA	99-11-091
180- 82-105	NEW	99-04-008	182- 25-090	PREP	99-05-077	192-320-060	NEW-XA	99-11-090
180- 82-110	NEW	99-04-008	182- 25-090	AMD-P	99-08-106	194- 22	PREP	99-07-005
180- 82-115	NEW	99-04-008	182- 25-100	AMD	99-07-078	196- 23	PREP	99-07-135
180- 82-120	NEW	99-04-008	182- 25-105	AMD	99-07-078	196- 23	PREP	99-07-136

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196- 23-020	NEW-P	99-10-085	220- 33-01000P	NEW-E	99-06-031	220- 55-055	AMD	99-03-029
196- 23-030	NEW-P	99-10-086	220- 33-01000P	REP-E	99-06-031	220- 55-05500A	NEW-E	99-06-007
196- 23-050	NEW-P	99-10-087	220- 33-01000Q	REP-E	99-10-022	220- 55-060	AMD	99-03-029
196- 24-058	PREP	99-07-134	220- 33-01000Q	NEW-E	99-10-022	220- 55-065	AMD	99-03-029
196- 24-058	REP-P	99-10-081	220- 33-03000M	REP-E	99-11-002	220- 55-070	AMD	99-03-029
196- 24-060	PREP	99-02-073	220- 33-03000M	NEW-E	99-11-002	220- 55-075	REP	99-03-029
196- 24-060	REP-P	99-10-088	220- 44-05000U	REP-E	99-08-045	220- 55-100	AMD	99-03-029
196- 24-085	PREP	99-02-071	220- 44-05000V	NEW-E	99-08-045	220- 55-105	AMD	99-03-029
196- 24-090	PREP	99-02-075	220- 44-05000V	REP-E	99-10-038	220- 55-110	AMD	99-03-029
196- 24-090	REP-P	99-10-082	220- 44-05000W	NEW-E	99-10-038	220- 55-115	AMD	99-03-029
196- 24-092	PREP	99-02-076	220- 44-08000A	NEW-E	99-03-008	220- 55-120	AMD	99-03-029
196- 24-092	REP-P	99-10-083	220- 47-302	AMD-XA	99-11-097	220- 55-125	AMD	99-03-029
196- 24-095	PREP	99-02-077	220- 47-304	AMD-XA	99-11-097	220- 55-155	REP	99-03-029
196- 24-095	REP-P	99-10-084	220- 47-307	AMD-XA	99-11-097	220- 55-160	NEW	99-08-029
196- 24-097	PREP	99-02-078	220- 47-311	AMD-XA	99-11-097	220- 56-100	AMD	99-08-029
196- 24-097	REP-P	99-10-085	220- 47-325	AMD-XA	99-11-097	220- 56-103	AMD	99-08-029
196- 24-098	PREP	99-02-079	220- 47-401	AMD-XA	99-11-097	220- 56-105	AMD-XA	99-11-098
196- 24-098	REP-P	99-10-087	220- 47-410	AMD-XA	99-11-097	220- 56-10500B	REP-E	99-10-049
196- 24-100	PREP	99-02-072	220- 47-411	AMD-XA	99-11-097	220- 56-10500B	NEW-E	99-10-049
196- 24-100	AMD-P	99-10-088	220- 47-412	REP-XA	99-11-097	220- 56-115	AMD-XA	99-11-098
196- 25-040	PREP	99-02-074	220- 47-427	AMD-XA	99-11-097	220- 56-11500A	NEW-E	99-10-049
196- 25-040	AMD-P	99-10-080	220- 47-428	AMD-XA	99-11-097	220- 56-11500A	REP-E	99-10-049
196- 25-050	NEW-P	99-10-082	220- 47-430	NEW-XA	99-11-097	220- 56-123	AMD-XA	99-11-098
196- 25-060	NEW-P	99-10-083	220- 48-01500I	NEW-E	99-08-011	220- 56-124	AMD-XA	99-11-098
196- 25-100	NEW-P	99-10-081	220- 52-04000I	NEW-E	99-09-035	220- 56-12400E	NEW-E	99-10-049
196- 26-020	PREP	99-02-070	220- 52-04000I	REP-E	99-09-035	220- 56-12400E	REP-E	99-10-049
196- 26-020	AMD-P	99-08-132	220- 52-04000J	REP-E	99-10-011	220- 56-145	AMD	99-08-029
204- 10-020	PREP	99-09-049	220- 52-04000J	NEW-E	99-10-011	220- 56-185	AMD	99-08-029
204- 24-050	AMD	99-06-023	220- 52-04000K	NEW-E	99-10-023	220- 56-185	AMD-XA	99-11-098
204- 32-020	AMD	99-09-021	220- 52-04000K	REP-E	99-10-023	220- 56-190	AMD-XA	99-11-098
204- 32-040	AMD	99-09-021	220- 52-04000L	REP-E	99-11-013	220- 56-191	AMD-XA	99-11-098
204- 32-060	AMD	99-09-021	220- 52-04000L	NEW-E	99-11-013	220- 56-19100G	REP-E	99-05-061
204- 80-020	AMD	99-02-045	220- 52-04000M	REP-E	99-11-042	220- 56-19100G	NEW-E	99-05-061
204- 90-140	PREP	99-09-049	220- 52-04000M	NEW-E	99-11-042	220- 56-19100I	NEW-E	99-10-049
204- 96-010	PREP	99-09-048	220- 52-046	AMD	99-10-062	220- 56-19100I	REP-E	99-10-049
208-464-010	REP	99-03-009	220- 52-04600J	REP-E	99-08-048	220- 56-195	AMD-XA	99-11-098
208-464-020	REP	99-03-009	220- 52-04600K	REP-E	99-08-011	220- 56-19500B	NEW-E	99-10-049
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208-464-040	REP	99-03-009	220- 52-04600L	REP-E	99-09-035	220- 56-205	AMD-XA	99-11-098
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208-464-060	REP	99-03-009	220- 52-04600M	REP-E	99-09-035	220- 56-20500C	NEW-E	99-10-049
208-464-070	REP	99-03-009	220- 52-04600N	REP-E	99-10-011	220- 56-225	REP-XA	99-11-098
208-464-080	REP	99-03-009	220- 52-04600N	NEW-E	99-10-011	220- 56-235	AMD-XA	99-11-098
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275- 30-030	AMD	99-03-077	296- 24-67507	AMD	99-10-071	296- 54-505	AMD-P	99-08-072
275- 30-040	AMD	99-03-077	296- 24-67515	AMD	99-10-071	296- 54-507	AMD-P	99-08-072
275- 30-050	REP	99-03-077	296- 24-67517	AMD	99-10-071	296- 54-509	AMD-P	99-08-072
275- 30-060	AMD	99-03-077	296- 24-71507	AMD	99-10-071	296- 54-511	AMD-P	99-08-072
275- 30-070	AMD	99-03-077	296- 24-71513	AMD	99-10-071	296- 54-51110	NEW-P	99-08-072
275- 30-080	REP	99-03-077	296- 24-71517	AMD	99-10-071	296- 54-51120	NEW-P	99-08-072
284- 07-050	AMD-XA	99-11-101	296- 24-71519	AMD	99-10-071	296- 54-51130	NEW-P	99-08-072
284- 43	AMD-C	99-03-037	296- 27	PREP	99-02-083	296- 54-51140	NEW-P	99-08-072
284- 43	AMD-C	99-03-038	296- 27	PREP	99-08-069	296- 54-51150	NEW-P	99-08-072
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284- 43-130	AMD-P	99-03-007	296- 30-020	AMD	99-07-004	296- 54-51170	NEW-P	99-08-072
284- 43-205	NEW-P	99-11-102	296- 30-025	REP	99-07-004	296- 54-51180	NEW-P	99-08-072
284- 43-810	NEW-P	99-03-006	296- 30-060	AMD	99-07-004	296- 54-51190	NEW-P	99-08-072
284- 43-810	NEW-P	99-03-007	296- 30-081	AMD	99-07-004	296- 54-513	AMD-P	99-08-072
284- 53-005	NEW-P	99-11-103	296- 30-900	AMD	99-07-004	296- 54-515	AMD-P	99-08-072
284- 53-010	AMD-P	99-11-103	296- 31-010	PREP	99-10-101	296- 54-51510	NEW-P	99-08-072
286- 26-100	PREP	99-08-092	296- 31-012	PREP	99-10-101	296- 54-51520	NEW-P	99-08-072
286- 26-100	AMD-P	99-08-114	296- 31-016	PREP	99-10-101	296- 54-51530	NEW-P	99-08-072
292-100-005	NEW	99-06-073	296- 31-040	AMD	99-07-004	296- 54-517	AMD-P	99-08-072
292-100-006	NEW	99-06-073	296- 31-060	PREP	99-10-101	296- 54-519	AMD-P	99-08-072
292-100-007	NEW	99-06-073	296- 31-065	PREP	99-10-101	296- 54-521	AMD-P	99-08-072
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292-100-040	AMD	99-06-073	296- 31-072	AMD	99-07-004	296- 54-529	AMD-P	99-08-072
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296- 54-537	AMD-P	99-08-072	296- 54-59510	NEW-P	99-08-072	296- 62-07176	NEW	99-10-071
296- 54-539	AMD-P	99-08-072	296- 54-59520	NEW-P	99-08-072	296- 62-07177	NEW	99-10-071
296- 54-53910	NEW-P	99-08-072	296- 54-597	AMD-P	99-08-072	296- 62-07178	NEW	99-10-071
296- 54-53920	NEW-P	99-08-072	296- 54-59710	NEW-P	99-08-072	296- 62-07179	NEW	99-10-071
296- 54-53930	NEW-P	99-08-072	296- 54-59720	NEW-P	99-08-072	296- 62-07182	NEW	99-10-071
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296- 54-541	AMD-P	99-08-072	296- 54-599	REP-P	99-08-072	296- 62-07186	NEW	99-10-071
296- 54-543	AMD-P	99-08-072	296- 54-601	AMD-P	99-08-072	296- 62-07188	NEW	99-10-071
296- 54-545	AMD-P	99-08-072	296- 54-603	AMD-P	99-08-072	296- 62-07190	NEW	99-10-071
296- 54-547	AMD-P	99-08-072	296- 54-604	NEW-P	99-08-072	296- 62-07192	NEW	99-10-071
296- 54-54710	NEW-P	99-08-072	296- 54-605	AMD-P	99-08-072	296- 62-07194	NEW	99-10-071
296- 54-54720	NEW-P	99-08-072	296- 54-607	AMD-P	99-08-072	296- 62-07201	NEW	99-10-071
296- 54-54730	NEW-P	99-08-072	296- 54-701	NEW-P	99-08-072	296- 62-07202	NEW	99-10-071
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296- 54-559	AMD-P	99-08-072	296- 54-99009	REP-P	99-08-072	296- 62-07219	NEW	99-10-071
296- 54-561	AMD-P	99-08-072	296- 54-99010	REP-P	99-08-072	296- 62-07222	NEW	99-10-071
296- 54-563	AMD-P	99-08-072	296- 54-99013	NEW-P	99-08-072	296- 62-07223	NEW	99-10-071
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296- 54-571	AMD-P	99-08-072	296- 56-60235	AMD	99-10-071	296- 62-07231	NEW	99-10-071
296- 54-573	AMD-P	99-08-072	296- 59	PREP	99-02-083	296- 62-07233	NEW	99-10-071
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296- 54-58110	NEW-P	99-08-072	296- 62-07117	AMD	99-10-071	296- 62-07255	NEW	99-10-071
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296- 54-583	AMD-P	99-08-072	296- 62-07130	NEW	99-10-071	296- 62-07261	NEW	99-10-071
296- 54-585	AMD-P	99-08-072	296- 62-07131	NEW	99-10-071	296- 62-07263	NEW	99-10-071
296- 54-587	AMD-P	99-08-072	296- 62-07132	NEW	99-10-071	296- 62-07265	NEW	99-10-071
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296- 62-07712	AMD-P	99-08-071	296- 62-30610	NEW	99-07-097	296- 62-41025	NEW	99-07-097
296- 62-07713	AMD-P	99-08-071	296- 62-30615	NEW	99-07-097	296- 62-41030	NEW	99-07-097
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296- 62-07721	AMD-P	99-08-071	296- 62-30705	NEW	99-07-097	296- 62-41033	NEW	99-07-097
296- 62-07722	AMD-P	99-08-071	296- 62-30710	NEW	99-07-097	296- 62-41035	NEW	99-07-097
296- 62-07722	AMD	99-10-071	296- 62-30715	NEW	99-07-097	296- 62-41040	NEW	99-07-097
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296- 62-07733	AMD	99-10-071	296- 62-3090	AMD	99-07-097	296- 62-41042	NEW	99-07-097
296- 62-07735	AMD-P	99-08-071	296- 62-30905	NEW	99-07-097	296- 62-41043	NEW	99-07-097
296- 62-07737	AMD-P	99-08-071	296- 62-30910	NEW	99-07-097	296- 62-41044	NEW	99-07-097
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296- 78	PREP	99-06-040	296- 79-31007	REP-P	99-06-071	296-150C-1545	NEW-P	99-08-129
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296- 78-71019	AMD	99-10-071	296- 79-31011	REP-P	99-06-071	296-150C-3000	AMD-P	99-08-128
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296- 79-011	NEW-P	99-06-071	296- 86A-020	AMD-P	99-08-128	296-150F-0140	NEW-P	99-08-129
296- 79-020	AMD-P	99-06-071	296- 86A-025	AMD-P	99-08-128	296-150F-0320	AMD-P	99-08-129
296- 79-030	AMD-P	99-06-071	296- 86A-028	AMD-P	99-08-128	296-150F-0605	NEW-P	99-08-129
296- 79-040	AMD-P	99-06-071	296- 86A-030	AMD-P	99-08-128	296-150F-0610	NEW-P	99-08-129
296- 79-050	AMD-P	99-06-071	296- 86A-040	AMD-P	99-08-128	296-150F-0615	NEW-P	99-08-129
296- 79-060	REP-P	99-06-071	296- 86A-060	AMD-P	99-08-128	296-150F-0620	NEW-P	99-08-129
296- 79-070	AMD-P	99-06-071	296- 86A-070	AMD-P	99-08-128	296-150F-0625	NEW-P	99-08-129
296- 79-080	AMD-P	99-06-071	296- 86A-073	AMD-P	99-08-128	296-150F-3000	AMD-P	99-08-128
296- 79-090	AMD-P	99-06-071	296- 86A-074	AMD-P	99-08-128	296-150M	PREP	99-05-078
296- 79-100	AMD-P	99-06-071	296- 86A-075	AMD-P	99-08-128	296-150M-0020	AMD-P	99-08-129
296- 79-110	AMD-P	99-06-071	296- 86A-080	AMD-P	99-08-128	296-150M-0120	NEW-P	99-08-129
296- 79-120	AMD-P	99-06-071	296- 99	PREP	99-02-083	296-150M-0140	NEW-P	99-08-129
296- 79-130	AMD-P	99-06-071	296-104-001	PREP	99-05-021	296-150M-0306	AMD-P	99-08-129
296- 79-140	AMD-P	99-06-071	296-104-002	PREP	99-05-021	296-150M-0309	NEW-P	99-08-129
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296- 79-230	AMD-P	99-06-071	296-104-040	PREP	99-05-021	296-150P	PREP	99-05-078
296- 79-240	AMD-P	99-06-071	296-104-045	PREP	99-05-021	296-150P-0020	AMD-P	99-08-129
296- 79-250	AMD-P	99-06-071	296-104-050	PREP	99-05-021	296-150P-0050	NEW-P	99-08-129
296- 79-255	REP-P	99-06-071	296-104-055	PREP	99-05-021	296-150P-0140	NEW-P	99-08-129
296- 79-260	AMD-P	99-06-071	296-104-060	PREP	99-05-021	296-150P-3000	AMD-P	99-08-128
296- 79-270	AMD-P	99-06-071	296-104-065	PREP	99-05-021	296-150R	PREP	99-05-078
296- 79-27001	REP-P	99-06-071	296-104-100	PREP	99-05-021	296-150R-0020	AMD-P	99-08-129
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296- 79-29023	AMD-P	99-06-071	296-104-700	AMD	99-08-049	296-150T-0300	NEW-P	99-08-130
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388-550-2900	PREP	99-06-084	388-551-1340	NEW	99-09-007	390- 14-100	AMD-P	99-09-070
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